NINE CASES OF Conſcience:

Occaſionally Determined

BY

The late Reverend Father in God,

ROBERT SANDERSON

Lord Biſhop of LINCOLN.

HEB. xi. 4.

He being Dead, yet ſpeaketh.

LONDON:

Printed for *C. Wilkinſon*, and *C. Brome*, and are to be ſold at the *Black-boy* in *Fleet-ſtreet*, and at the *Gun* at the Weſt-end of S. *Pauls.* 1685.

Carolus Secundus
Dei Gratia

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A LETTER from a Friend concerning the enſuing *CASES.*

SIR,

HAving peruſed the Papers you ſent me, I can ſafely vouch them for Genuine, and not in the leaſt Spurious, by that reſemblance they wear of their Reverend Author; and therefore you need not fear to bring them to the Publick Teſt, and let them look the Sun in the face.

'Tis true, their firſt Commiſſion was but ſhort, and long ſince expired, they being deſigned only to viſit and reſpectively ſatisfie ſome private friends; yet I cannot ſee what injury you will offer to his ſacred aſhes, if, by renewing that, you ſend them on a little farther Embaſſie for the common good.

Indeed the leaſt remains of ſo matchleſs a Champion, ſo invincible an Advocate in foro Theologico, *like the filings and fragments of Gold, ought not to be loſt; and pity the World was not worthy many more of his learned Labours.*

But—Præſtat de Carthagine tacere quam pauca

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pauca dicere, *far be it from me to pinion the wings of his Fame, with any rude Letters of Commendation; or, by way of precarious Pedantry, to court any man into a belief of his worth, ſince that were to attempt* Iliads *after* Homer, *and ſpoil a piece done already to the life by his own Pencil, the works whereof do ſufficiently* praiſe him in the gates.

All I aim at is, to commend and promote your pious intention, to give the world ſecurity, by making theſe Papers publick; that they ſhall never hereafter ſtand in need of any other hand to ſnatch them out of the firſt, a doom (you ſay) once written upon them.

I have no farther trouble to give you, but to thank you for theſe excellent Pieces of the ſame Hand and Stamp (as every intelligent Reader will eaſily diſcern) with which as an acceſſion to this Edition, your Care and Piety hath obliged the Publick: Only again let me beſpeak your vigilance over the Preſs, which by her dayly teeming and expertneſs, or (at leaſt) negligence of the Midwife, is wont of late to ſpoil good births with monſtrous deformities, and unpardonable Errata; *ſo you will avoid a double guilt contracted by ſome without fear or wit, of abuſing your critical reader on the one hand, and your moſt judiciouſly exact Writer on the other; and (if that may contribute any thing more) very much gratifie the moſt unworthy of his Admirers.*

The

The Eight Cases Determined.

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Imprimatur.

John Hall, R.P.D. Episc.
Lond. a Sac. Domestic.

May 30. 1665.

The CASE of

Marrying with a *Recusant*.

SIR,

YOurs of *July* 2. I yesterday *July* the 6. received. In Answer to the Contents whereof (desiring that my Services may withal be most humbly presented to my very much Honored Lord) I return you what my present thoughts are concerning the particulars therein proposed. First, For Marrying a Daughter to a professed *Papist* (considered in *Thesi*, and as to the Point of Lawfulness only) I am so far from thinking the thing in it self to be simply, and *toto genere*, unlawful; that I dare not condemn the Marriage of a *Christian* with a *Pagan* (much less with any other *Christian*, of how different Persuasion soever) as simply evil and unlawful, inasmuch as there be Causes imaginable, wherein it may seem not only lawful, but expedient also, and (as the exigence of Circumstances may be supposed)

little less than necessary so to inter-marry. But since things lawful in the General, and *in Thesi*, may become (by reason of their inexpediency) unlawful *pro hic & nunc*, and *in Hypothesi* to particular persons; and that the expediency or inexpediency of any action to be done, is to be measured by the worthiness of the end, the conjuncture of present Circumstances, and the probability of good or evil consequents and effects, prudentially laid together, and weighed one against another. I conceive it altogether unsafe for a Conscientious person (especially in a business of so great concernment, as the Marrying of a Child) to proceed upon the General Lawfulness of the thing, without due consideration of circumstances, and other requisites for the warranting of particular Actions. Now, as for the Marriage of a Daughter with one of so different Persuasion (in point of Religion) as that they cannot joyn together in the same way of God's Worship, which is the case of a Protestant and a Papist, it is very rare to find such a concurrence of Circumstances, as that a Man can thence be clearly satisfied in his Judgment (without just cause of doubting the contrary) that it can be expedient to conclude

conclude upon such a Marriage; and how dangerous a thing it is to do any thing with a *doubting Conscience*, we may *learn* from *Rom.* 14. 13. For the *evil consequents* probably to ensue upon such Marriages, are so many and great, that the conveniencies which Men may promise to themselves from the same (if they should answer expectation, as seldom they do to the full) laid in an equal ballance there-against, would not turn the scale; and in one respect the danger is greater to marry with a Papist, than with one of a worse Religion; for that the main Principle of his Religion, (as a *Papist*) is more destructive of the comfort of a Conjugal Society, than are the Principles of most Hereticks; yea, than those of *Pagans*, or *Atheists*; for holding that there is no Salvability but in the Church; and that none is in the Church, but such as acknowledg Subjection to the See of *Rome*; it is not possible, but that the Husband must needs conclude his Wife to be in the *state of Damnation*, so long as she continueth *Protestant*: whence one of these two great inconveniences will unavoidably follow; that either he will use all endeavours, engins, and artifices, to draw her to the Church of *Rome*,

(as indeed who can blame him to bring his Wife into a capacity of everlasting Salvation?) The restless importunity whereof (together with the ill advantages they of that party can make from the sad Confusions that are amongst us in these times) it will be very hard for one of the weaker sex perpetually to resist; or else in case she stand firm in her Religion against all Assaults and Attempts to the contrary, whatsoever he may be towards her in outward carriage, he cannot but in his inmost thoughts, pass judgment upon her, as an obstinate and desperate Heretick, and (so living and dying) an accursed and damned Creature. These are sad things both; and it is not conceivable how a Woman so matched should live with any comfort, or ever hope to see a good day, wherein she shall not either be tempted from her Religion, or censured for it; what assurance can she have of his good affections towards her, who is bound not to permit any better opinion of her, than of a Reprobate and Castaway? Is it possible there may be so much good nature in the Husband, as to take off somewhat from that rigidness, which otherwise the Principles of his Religion would

would bind him to, or so much discretion, sweetness, and obligingness in the Wives demeanor towards him, as to preserve a good measure of Conjugal Affection between them, notwithstanding their different Persuasions: This I say, is possible, and where it happeneth so to be, it rendreth the condition of the Parties so much the less uncomfortable; and that is the utmost of the *happiness* that is to be hoped for from such Marriages: and I think there cannot be produced many examples thereof; yet even there, there cannot be that cordial Affection, and fulness of Complacency (wherein yet the chiefest happiness of Conjugal Society consisteth) that would be, if the same Parties (supposed to be of the same Qualifications otherwise) were also of the same Religion. I omit other *Oeconomical* differences, that may, and very frequently do (occasionally) arise, betwixt Husband and Wife from this difference in Religion, as concerning the entertainment of Friends, the choice of Servants, the education of Children (very considerable things all) besides sundry other perhaps of less moment; yet such as are apt to breed Discontents and Jealousies, and sometimes break out

into great Distempers in the Family: Such Marriages thereof I should utterly dissuade; especially in the *Nobility*, *Gentry*, and *Commonalty*, where there is choice enough otherwise to be had of Persons of equal Degree, Estate, and Education of the same Religion to match withal: Kings and Princes for reasons of State, and because there is little choice of Persons of equal Dignity with themselves, are therefore oftentimes by a kind of necessity, put upon such Marriages; yet even there, where they are certainly the most excusable, it hath been observed, that such Marriages have proved for the most part unfortunate.

The other Particular proposed in your Letter, is concerning the *Marriage of a Daughter to one that professeth the Protestant Religion, but having had Popish Parents, may be suspected (though he deny it) to be that way inclined.* The resolution whereof (as of most other *Cases*, and *Practical Questions*) will depend very much upon the consideration of *Circumstances*, whereunto being altogether a stranger, I am less able to give Judgment in the Case with any certainty; only in order to the resolution of the question, these (to my understanding) seem

to

to be the most proper and important Enquiries.

First, Whether the Parents of the young Person be living or no, one or both? If both be dead, the *Temptations* from them (which in such *Cases* are wont to prevail very much) are by their Death clearly *superseded*; and then the danger is by so much less: but if either be living, there can be little security of the Sons *continuance* in the *Protestants Belief*, (notwithstanding his present Profession thereof) when he shall be *assaulted* with the *whole Authority* of them, to whom he oweth *Reverence*.

Secondly, With what degree of *Confidence*, and with what kind of *asseverations* he *professeth* the *one*, and *denieth* the *other Religion*; for although they out of *design* put on a counterfeit vizor, use all the art they can to *dissemble it*; yet very seldom can it be done so *cunningly*, *warily*, and *constantly*, but that at some time or other, the *dissimulation* will unawares bewray it self to the *Eye* of a *curious observer*.

Thirdly, What measure of understanding the young Person (who is, you say, of *great Abilities* for his Age) hath in the *Fundamental Articles* of the *Christian Religion*, those I

mean, wherein the *English* and *Romish Churches* are at *agreement*, for in *those* the *substance* of *Christianity consisteth*; he that rightly understands those *Catholick Truths* taught in the *Catechisms* of both Churches, and concerning which all *Christendom* (in a manner) are at *perfect accord*; and then will but suffer himself to consider, that the *Church* of *England* doth not *impose* upon the *judgments* and *consciences* of her *Members*, any thing to be *believed*, or received, as of *necessity* to *Salvation*, than what is *truly Catholick*, and by her Adversaries confessed so to be; and consequently, that the *difference* betwixt *her* and the *Romish Party*, is wholly about those *Additionals* or *Superstructures*, which they of the *Roman Faith* require to be *believed*, and *received* with like *necessity* as the *former*; but appear to us of this *Church respectively*, either *evidently false*, or of *doubtful truth*, or not of *absolute necessity* to be *believed*; I say, whosoever well considereth this, may rest *satisfied* in his *judgment* and *conscience*, that the *Faith taught* and *professed* in the *Church* of *England*, is a *plain* and *safe way* to lead a *Christian Believer* to *Eternal Salvation*, if he withal lead his *life* and *conversation* answerable thereunto.

To

To the last particular in your Letter, all the return I have to make, is no more but an humble acknowledgment and sense of his *Lordships* noble favors towards me, in entertaining an opinion of me more suitable to his own goodness and ingenuity, than to my merit: I know not, nor desire to know of any occasions likely to draw me into those parts so distant from me (being grown into years, and infirmities, that render me very unfit for long Journies) unless the business of my *Sons Marriage*, which occasion'd my late Journy to *London*, require a second thither in *Michaelmas* Term. But I am so sensible both of the trouble and charge of such Journies (besides some inconveniencies to my affairs at home, whilst I am long absent) that I will avoid it, unless there be no other remedy. I shall not *willingly decline* any employment (within my low and narrow sphere, both of outward condition and parts) wherein my *service* may be any ways *useful*, or but *acceptable*, to that *noble* and *excellent Person:* but truly Sir, I conceive there will be little need of my further *endeavors*, as to that particular expressed in yours, whether what I have written now, give *satisfaction*, or *not*; there are

persons

person nearer hand, whom I know to be *much fitter* for an *employment* of that *nature*, than *my self*, who have ever studied *Peace* more than *Controversies*; and namely, one at the next door to *Hatton-House*, whose *sufficiency* and *readiness* in that kind is well known to Mr. *Geoffery Palmer*. Sir, I wish you *Happiness*, desire your *Prayers*, and rest,

July 7. 1656. *Your Faithful and Humble Servant,*

The

The CASE of

UNLAWFUL LOVE.

TWO Gentlemen who were very good Friends, and both of them Married, uſed to converſe together familiarly; one of theſe took a ſpecial liking in the company and converſation of the others Wife, and ſhe anſwerably in his; which afterwards proceeded to ſome degree of Love, which, though ever reſtrained, and preſerved without any violation of Chaſtity, grew yet in the end to this iſſue, that they mutually vowed either to other; that if happily either of them ſhould at any time be freed from the Bond of Matrimony (either he by the death of his Wife, or ſhe by the death of her Husband) that party ſo freed ſhould continue afterwards unmarried, and ſtay for the other, till the other ſhould be freed alſo, though it were during life: Now ſo it is, that the Gentlewomans Husband died, and her affections and reſolutions ſo altered, that gladly ſhe would Marry, if ſhe might be releaſed of the Engagement of that Vow; or perſuaded of the unlawfulneſs or nullity thereof.

Con-

Concerning the present Case, as it is propounded, sundry Points are needful to be resolved, that so we give a right judgment *de præterito*, of what is already done for the time past, in respect of the Gentlewomans *former promise*, and sound direction also *de futuro*, what is further to be done for the time to come, in respect of her present distresses.

Point. I.

Sect. 1. First of all, It is considerable, whether the Promise made by the Gentlewoman and her friend, were properly a Vow or no? So it is called in the proposal of the present *Case*, and that agreeable to the common use of speech with us here in *England*, who extend the word [*vow*] very far; neither shall I make scruple in the ensuing *Discourse*, sometimes to call it so; for *Loquendum ut Vulgus*. But to speak properly, a *Vow* is a word of a narrower extent than a *Promise*, every *Vow* being indeed a *Promise*, but not every *Promise* necessarily a *Vow*. (a) *Promises* may be made *indifferently*, either to *God*, or *Men*; but *Promises* made to *Men* are no *Vows*: where-

(a) *Votum soli Deo fit, sed Promissio potest fieri etiam Homini.* Aquit. 2. 2. q. 88. 5. ad 3.

wherefore it is usually inserted into the definition of a *Vow*, as a condition (b) *essentially requisite* thereunto, that it be made unto *God* alone, insomuch as to make a *Vow* to any Creature, is *interpretative* to exalt the Creature into the place of God, and so to make it an *Idol*, which is clear, not only from the (c) *expres's precept of God*, and the *constant* (d) *examples* of *godly Men*, and the *usual* (e) *phrases* of the *Holy Ghost* in the *Scriptures*; but also from the *universal consent* of all *learned Men*, both *Divines* and *others*, and even of (f) *Heathens* also: This Gentlewomans *promise* then being made to the Gentleman her Friend *alone*, as was his also to her, and neither of both to God, is therefore to be taken for a *meer Promise*, but no *Vow*.

(b) *Promissio Deo facta est essentia voti*, Ibid.

(c) Psal. 76. 11.
(d) Num. 21. 2. Judg. 11. 30. 1 Sam. 11. 25.
(e) Judg. 11. 36. Psal. 56. 11.

(f) *Sponsio quâ obligamur Deo*, Cic. 2. Leg.

Sect. 2. If for more confirmation thereof, she bound her self also by *Oath*, as it is not unlike, yet it is no more for all that but a *meer Promise* still, and not a *Vow*; for albeit the very using of an Oath be a *calling in of God*

God into a busines, and the *person* that taketh an *Oath* doth thereby set himself in the *presence of God*; yet an *Oath* calleth him in only to be (*a*) a *witness*, without any intent to make him a *party* to the *business*, whereas in a *Vow* he is made a *party*, and not only a *witness*; whereuuto agree those forms so frequent in *Holy Scripture*, in Oaths both *assertory*, and *stipulatory* (b) *The Lord be witness between us*: (c) *God is my witness*: (d) *I take God to Record*, and the like: for even as when a *promise* is made unto God, whereunto for the more *solemnity*, the *presence* of some Men is required as *Witnesses*, such a *Promise* is to he held for a *Vow*, because it is made to God *alone*, although in the *presence* of Men: So on the other side, when a *Promise* is made unto *some Man*, whereunto for the *more assurance*, the *presence* of God is required as a *witness*, such a *Promise* is not to be held for a *Vow*, because it is made unto Man *alone*, although in the *presence* of God.

(a) *Jurare nihil est aliud quàm Deum Testem invocare.* Aq. 2. 2. qu. 89. 1. ex *Aug. de ver. Apost. Serm. R. 28. quod affirmas, si Deo Teste promiseris, id tenendum est*, Cic. 3. de offic.

(b) Gen. 31. 50. Judg. 11. 10. Mal. 2. 14.
(c) Rom. 1. 9. 1 Thes. 1. 5.
(d) 1 Cor. 1. 23. Phil. 1. 28.

Sect.

Sect. 3. Nay further, if the Gentlewoman when ſhe thus *engaged* her ſelf, did uſe theſe very words [*I VOW TO GOD*] or words to that effect, as we know is often done in *ſolemn Promiſes* between Man and Man; yet neither is that ſufficient to make it properly a *Vow*; for to judg rightly when queſtion is made concerning any particular *promiſe*, whether it be a *Vow* yea or no; we are not to be guided ſo much by the *forms* of *ſpeech*, (which are ſubject to change, impropriety, and many defects) as by the true intention and purpoſe of the *Parties*, eſpecially the *Promiſer*. Now what was the whole *intent* and *purpoſe* of theſe *Parties*, when they mutually bound themſelves in ſuch ſort, as in the *Caſe propounded* is laid down, no reaſonable Man can be ignorant; even this and no other, to give as good *aſſurance* as they could *deviſe*, either to other, and to receive the like *aſſurance* again, that the *thing* by them *agreed on*, and *promiſed*, ſhould be *faithfully performed*; and if either *Oaths* or *Proteſtations* were alſo *uſed* by way of *Confirmation*, they are all in *common intendment* to be taken as *tending* to the *ſelf-ſame purpoſe*, without looking at any further thing; and clearly where the *Promiſer* hath no inter-

tion

tention to *bind* himself to *God*, but to *Man* only, the *Promise* so made is no *Vow*, whatsoever *formality of words* may be used in the making of it.

Sect. 4. Neither is the *examination* of this Point a *curiosity* either in it *self fruitless*, or *impertinent* to the *Case in hand*; for albeit, in that which seemeth to be the very *main Point* of all, *viz. the power of binding the Conscience*, there be no *material difference* between a *Vow*, and an *ordinary Promise*; a *lawful Promise* no less *binding* unto performance, than a *lawful Vow*; and an *unlawful Vow* no more *binding* than an *unlawful Promise*: yet there is some *difference* between them, and that of *some importance too*, in respect of the *relaxation* of that *Bond*; for since it belongeth to *him* to whom a *Bond* is made to grant a *Release* thereof: It belongeth therefore to *God alone* to *release* the *obligation* of a *Vow*; and no Man hath power so to do, because the *Vower* by his *Vow*, bindeth himself to *God*, not to *Man*; whereas the *obligation* of a *mere Promise*, wherein the *Promiser* bindeth himself but to *some Man*, may be *Released* by *that Man*; and a *Release* from him is to the *conscience* of the *Promiser* a *sufficient discharge* from the said *obligation*: which Con-

Consideration of what *use* it will be in the *present Case*, will in the due place further appear. In the mean time we have *evidently proved*, that this Gentlewoman *bound her self* by *Promise* only, and not by *Vow*.

Point II.

Sect. 5. We are next to enquire concerning the *validity* thereof, whether or no the Gentlewoman (*a*) *having an Husband* at that time, were so *disabled* in that *respect* from making such a *Promise*, that the *Promise* then made by her, without the *Husbands consent*, was *utterly void* from the very beginning: For the Wife is under (*b*) *the Law*, and (*c*) *under the power of her Husband*, and so is not *sui juris*, nor can bind her self by *Vow*, *Oath*, *Promise*, or otherwise, without the *privity* and *consent* of her *Husband*; which consent we may presume this Gentlewoman never had, the *Promise* being of that *nature*, that it had been not only *immodesty*, but even *madness* at all to have sought it. And it is certain from the (*d*) *Law of God*, by *Moses* (to the

Ὑπανδρος γυνή.
(*a*) Rom. 7. 2.
(*b*) Rom. 7. 2.
(*c*) 1 Cor. 7. 4.
(*d*) Num. 30. 3.

equity whereof *Christians* are still bound, because it's founded upon *right Reason*, and the *light of Nature*) that every *Vow* and *Promise* made by a *person* that of *right* hath not *power* to make it, is *de jure nullum*, altogether void from the first instant, and *bindeth* the Party no more than if it never had been made.

Sect.6. If any *Scruple* shall arise from this *Consideration*, that albeit the *Promise* made by the *Wife* in her *Husbands* life-time, *bind* her not without his *consent*, so long as he liveth, because she is all that while under his *power*; yet after that she is *loosed* from the *law of her Husband*, by his *death*, it shall thenceforth *bind* her, because she then becometh *sui juris*: I say, this maketh no *difference* at all in the *Case*; for this is a *general Rule*, that *what* (b) *act soever had a nullity in it at the first, when it was done, cannot by any succeeding tract of time grow to be of force.* As if a young Scholar shall be *instituted* to a *Benefice*, being not of *lawful years*; or a young *Heir* make a *sale* of his *Lands* during *minority*, the *institution* and the *sale*, as they were both *void* at the *beginning*, so they shall continue *void*, as

(b) *Quod initio vitiosum est, non potest tractu temporis convalescere.* L. 29. *F. de Reg. ju. Div.*

as well after the *Clark* is of *lawful years*, and the *Heir* at full *age*, as before; so that to judg of the *validity* of any *Vow*, *Promise*, or *Covenant*, respect must be had to (c) that *very time* wherein it was *made*, and to the *present condition* of the *person* at that *time*, and not to any *time* or *condition before* or *after*: If then there were indeed a *nullity* in this Gentlewomans *Vow*, at the *time* when she *made it*, there is a *nullity* in it still; and if it were indeed of no force to *bind* her *then*, neither is it of any force to *bind* her *now*.

(c) *In stipulationibus ad tempus spectator quo contrahimus.* l. 18 F. *eodem.*

Sect. 7. But after due pondring of the *matter*, I rather think, that there was not a *nullity* in the *promise* at the *first*, neither (supposing it had been rightly *qualified* in other respects) was it *void* upon this *ground*; because although she were not *sui juris absolute*, it is sufficient yet, that she was so *quantum ad hoc*. For a *person* that is under the *power* of another, hath yet *power of himself*, (and so is *sui juris*) to *dispose* of all such things, as by the *free disposal* whereof, the *proper right* of him, under whose *power* he is, is no way *prejudiced*; but in whatsoever may be *prejudicial* to the *other* in any of his *Rights*, he is

juris alieni: neither may *dispose* thereof without the *other consent*; and if such a *person* shall make a *Vow*, or other *Promise* concerning any of those things wherein he is *sui juris*, such *Vow* or *Promise* shall *stand good*, and is not *void* (though possibly it may be *vitious* in other respects) from the *inability* of the *person* that *maketh it:* As for example, if a *Servant* shall promise to his *own Father*, to *work* with him a day or two in *Harvest*, this *Promise*, unless his Master *consent* thereunto, shall be *void*, because the *Master* hath a *right* in the *Servants work*, to which *right* it would be *prejudicial*, if the *Servant* should *dispose* thereof after his own *pleasure*; but if such a *Servant* shall *promise* unto his *needy Father* to *relieve* him from time to time with a *third* or *fourth part* of all such *wages* as he shall receive for his service, this *Promise* shall be *good of it self*; neither shall the *Masters consent* be requisite to make it so, because the *Master* hath no right at all in the *Servants wages*; wherein to be *prejudiced* by the *Servants disposing thereof* according to his own mind: Now, forasmuch as the *Husbands right* and *power* over the *Wife ceaseth* together with his *life*, (as the Apo-

(a) Rom. 7. 23. stle (*a*) expresly teacheth) and so

so cannot be *prejudiced* by any *act* of the *Wife* done after his *Decease*; it is manifest that the Wife is *sui juris* to make a *Vow* or *Promise* during her *Husbands life-time*, concerning something to be done after his *decease*, in case she *over-live* him, because his *right* will be *expired* before the *performance* of the said *Vow* or *Promise* be due; as to give instance in a Case not much unlike to this in question: A Wife *estated* upon her Marriage in a *Jointure* or *Annuity* for her life of an 100 *l.* *per Annum*, maketh a *Promise* in her Husbands *life-time* to one of her *younger Brothers*, that hath but short Means, to allow him thenceforward out of the said Estate 10 *l.* yearly toward his better Maintenance; this *Promise* is *void* unless the *Husband consent*, because the performance thereof would prejudice him in that right which he hath during his own life in the *Revenue* of all the *Lands* and *Annuities* estated upon the Wife in *Reversion*; but if such a Wife shall promise to her said Brother to allow him the said yearly sum of 10 *l.* after the decease of her Husband in case she survive him, this promise is good, though made by the Wife in her Husbands *life-time*, and without his consent, because the Husbands right, (being

to cease before the Promise is to be performed) cannot be prejudiced by the performance thereof: And this I find agreeable to the *best Casuists*, whose peremptory opinion it is, that (b) *Husbands and Masters cannot disannul such* Vows *as their Wives and Servants make concerning things to be performed at such time as they shall be from under their power.* Which *position*, if it be true (and I yet see no reason why it should not) then doubtless this Gentlewomans *Vow* made to *her Friend*, though in the *life-time*, and without the *consent* of her Husband, was not *originally void* from the inability to make it, upon this respect, that she was not *sui juris* so to do.

(b) *Vota uxorum vel servorum exquunda illo tempore quo fuerint sui juris mariti vel domini non possunt irritare.* Nav. Man. Num. 65. & alios.

Point III.

Sect. 8. But though I dare not say, neither do I think that there was a *nullity* in it, in respect of the person, to make it *void* that way; yet it cannot be denied, but there was much *obliquity* in it, in respect of the matter, to make it otherwise *utterly* unlawful: in which Point much need not be said, because

becauſe the truth thereof will ſoon appear; for there was in it manifeſtly a *threefold obliquity*, and thereby alſo a *breach* of three ſeveral Commandments. The firſt obliquity was in reſpect of the unlawful affection from which it proceeded; which being placed upon another than the Husband, and that in ſuch an high degree, as to produce a promiſe of this kind, muſt needs be *vitious*, both for the *object*, and for the meaſure, and ſuch inordinate affection by the Analogy of our Saviours (*a*) expreſſion of the Law, is a violation of the Chaſtity of the Heart, and ſo a breach of the Seventh Commandment. The ſecond *obliquity* was, the want of that true *Conjugal love* which ought to be between Husband and Wife, who ought to have a *mutual* (*b*) complacency and delight the one in the other, and to be (*c*) ſatisfied at all times with the Love, Comfort, and Society the one of the other; which Love, if it had been ſo throughly rooted and ſeated in the Gentlewomans heart, as it ought to have been, would have *cruſhed* all motions of *unlawful affection* towards a Stranger, in the *ſhell*, long before they

(*a*) Matth. 5. 28.

(*b*) Prov. 5. 18 Eccleſ. 9. 9.

(*c*) Prov. 5. 19

they could grow to such strong Resolutions, as by the making of this *Vow* it appeareth they did; for it is not to be imagined that such a *Vow* as this could be made, and really intended to be performed, but we must needs suppose in the parties so *vowing*, a kind of weariness at the least, if not rather some inward loathing of the present *Yoak*; which being contrary to that honour that married persons owe to their yoak fellows, is so a breach of the Fifth Commandment: A third *obliquity* there was also as a breach of the Tenth Commandment, against those expres words [*Thou shalt not covet thy Neighbours Wife*] every Man and Woman being to *content* themselves with that *lot*, which, by Gods Providence hath befallen them, as in all other things, so especially in that which is of the greatest weight, the lot of Marriage, without coveting or lusting after that which it hath pleased the Wisdom of God already to dispose upon another; this Gentlewomans promise then being such, as (if it should be brought to an impartial Trial before that Tribunal which God hath erected in every ones Conscience, and according to the tenor of that Divine Law, whereof no Christian should be ignorant)

rant) could not be reasonably acquitted from any one of these sinful *Obliquities*, but not possibly from them all, we may conclude to have been an Act utterly unlawful.

Point IV.

Sect. 9. But because a Man may contract an *Obligation* by an *act* not free from *Obliquity*, as the saying in such Cases is [*Fieri non debet, factum valet,*] and we have a *Ruled case* for it in the *Covenant*, which the *Princes* of *Israel* made with the *Gibeonites*, which though (b) *sinfully made* at the first, was (c) *ne-* necessary to be kept afterwards: We are therefore to enquire into a *Fourth Point*, Whether the Gentlewoman having *de facto* bound her self by such an *unlawful promise*, be still by virtue of the said *promise*, bound in *Conscience* to the performance thereof, or not? To answer directly to the Point, *I take it, she is not bound thereunto*; for that saying [*Fieri non debet, factum valet*] hath place only there, where the *obliquity* that maketh the *act unlawful*, may be severed from the substance of the *matter*, about which the act

(b) Josh 9. 14. &c.
(c) *Ibid* ver. 19. 2 Sam. 21. 1, 2.

is

is converſant; as when a Man *voweth* to do ſomething, which is not in it ſelf, and for the ſubſtance of the matter *ſimply unlawful* to be done; but yet *voweth* it, either raſhly, and with due advertiſement, or for ſome indirect and unwarrantable end, or upon ſlight and inſufficient inducements, or the like, any of theſe *Obliquities* are enough to make the *vow unlawful*, in reſpect of the act of *vowing*: yet becauſe theſe *Obliquities* do not neceſſarily paſs upon the matter it ſelf, or the thing *vowed*, but may be ſevered from it; therefore, though the *act* of *vowing* were ſinful, the *Vow* it ſelf for all that may ſtand good, and bind the Party to performance; but where the *ſinful obliquity* paſſeth upon the ſubſtance of the matter, or adhereth inſeparably thereunto; there not only the act of vowing is ſinful, but the *performance* alſo becometh unlawful: In which *Caſes* thoſe other ſayings ought rather to have place, *Juramentum non debet eſſe vinculum iniquitatis, in malis promiſſis reſcinde fidem, in turpi voto muta decretum*, &c.

Sect. 10. If it ſhall be ſaid, that this difference being admitted, will nothing avail the Gentlewoman in our preſent Caſe, to

to free her from the *obligation* of her said *Promise*; because here the *matter* of *Promise* seemeth not to be in it self *unlawful*, especially on her part; for if the Gentleman her Friend, were presently free from the Bond of Matrimony by the death of his Wife, as the Gentlewoman now is by the death of her Husband, they might perform what they had promised either to other, by joyning themselves in Matrimony, and that without sin, which is an argument that the *sinful obliquity* was only in the act of promising; which therefore they ought to repent of: but doth not cleave to the matter of the promise, which therefore they ought not to *violate*. To this I answer, what in my opinion is true, That if both the Parties were now actually free from the Marriage bond, they not only *lawfully* might, but were in Conscience bound (unless some other lawful impediment should hinder) to joyn themselves together in *Matrimony*, because none of the fore-mentioned *Obliquities*, which made the former act of promising unlawful, would fall upon the after-*act* of *Marriage* to make it unlawful. But that *Allegation* is not direct to the Point in hand, nor to the Case as it is propounded; for it may

may be observed from the very form of the proposal, that the matter of the promise, wherein the Parties interchangeably bound themselves, was not to *Marry* together, when they should be both free; upon which false ground the Objection runneth; that was indeed the thing they aimed at therein; but the end is one thing, and the matter another: but the very matter of the promise was, the continuance of their mutual affection either to other, with a resolution to stay the one for the other, when either Party should happen to be free from the bond of the present Matrimony, till the other should be also free. The continuance of which *affection* and resolution, will upon examination be found subject to all, or some of the three *Obliquities* aforesaid; and therefore as such an affection and resolution, could not be entertained at the first without sin; so neither can they be now continued in without sin; for so long as they continue, the first of the said *Obliquities* remaineth still, both on his part and hers; the second indeed by the death of the Husband is ceased on her part, but remaineth still on his, and the third contrarily being on his part ceased, remaineth

eth still on hers, as will evidently appear to the understanding of any Man that shall take the pains to examine it.

Sect. 11. Yea, and it is further to be considered, that the continuance of such an affection and resolution may be likely to expose as well the one as the other to the assault of more strong and dangerous temptations, now since the Husbands death, than before. The danger on the Gentlemans part, this, lest by how much he is now by the Husbands death, put into a nearer possibility of enjoying his unlawful hopes, he should grow into so much the deeper loathing of his own bed, and so much the earnester longing that, that which is now the only *obstacle* to the fruition of his desires were removed; of which thoughts, who can tell how *fearful* the *issues* might be? The *sly Enemy* being most ready at all times to *practise* upon the *corruption* that is in the *naughty heart* of Man; but especially having a *mighty advantage* against him, when he hath got his *conscience* as it were in a *snare*, by the *engagement* of some *Vow*, *Promise* or *settled Resolution*. And then on the Gentlewomans part, the *danger* this, lest having by her own voluntary act debarr'd her self of that which is the only allow-

allowed remedy, namely *Marriage*; she should by the just judgment of God, be left to the rage of the Disease of *burning Lust*: for upon what sound warrant can she be confident, or with what reason expect, that God should either preserve her from, or assist her against temptations in that kind, though she should seek it of him with Fasting, and Prayers, and Tears, so long as she tempteth Him by persisting in a wilful obstinacy against that means of Remedy which He hath appointed? Indeed, where the Hand of God himself hath prevented the use of the Remedy, (as if the Husband should be long detained in a forein Land, or held in close Prison, or taken with a *dead Palsie*, or some other bodily impotence, or the like) there the Wife might comfortably implore God's assistance to preserve her from being overcome by carnal temptations, and assuredly rest upon it by Faith, if she be not wanting to her self, in putting to her own utmost endeavours, because she hath a Promise to rest upon for that purpose; and God who is faithful in all his Promises, is also faithful in this, of *not suffering his Servant to be tempted beyond their strength*: but for the Wife, by some inconsiderate

siderate act of her own, wherein she wilfully and obstinately persisteth, to refuse the appointed means, and yet to expect God's assistance nevertheless, for which she hath no Promise, is a fearful tempting of God; and it is but a just thing with God, and she suffereth it *worthily* for her *presumption*, if she be left to her self, and to wrestle with the temptation by her own strength, and so be overcome thereby: For God, who hath after a sort tied himself by his free and gracious Promise, to protect us *in Via Regia*, so long as we walk in the ordinary known way that he hath appointed for us, hath no where bound himself to vouchsafe us the like powerful protection *extra viam Regiam*, if we refuse that *high-way*, to walk in *by-paths* of our own choosing; which present dangers on both sides; and the former reasons laid together, do sufficiently prove, the Gentlewoman is not at all bound to perform her said unlawful Promise.

Point V.

Sect. 12. Hitherto we have proceeded in *genere judiciali*, by considering of the nature and *validity*, lawfulness and *obligation* of the Promise

Promise for the time past. Now we are to deal *in genere deliberativo*, and to consider what in *Christian Wisdom* is meetest to be farther done, for the better both quieting and regulating of the Conscience for the time to come; wherein submitting to Men of better judgments, and experience, I give my advice as followeth, *viz.*

First, That the Gentlewoman out of the serious consideration of the Premises, be brought to a through feeling of the grievousness of those sins which she hath committed against God, and wherein she hath so long continued, that so she may not only be humbled in his sight with true contrition of Heart, and remorse for the same, proportionable to the greatness thereof; but also be provoked to a proportionable measure of thankfulness unto him, for his gracious goodness in restraining her unlawful affections from breaking out into actual uncleanness, and preserving her when she had run out so far in an evil way, from rushing into more desperate Extremities; for *Erranti nullus terminus*: as a stone that tumbleth down a steep Hill, so Mans corruption, when it is once set on going, hath no stay of it self till it come to the bottom of *Hell*, unless

less the Lord lay a stop in the way: and it is to be acknowledged a blessed act of God's merciful Providence, when we have let loose the reins to our own *lusts* in any kind, if they be bridled from running headlong into all excess of wickedness; great sins require more than ordinary Repentance, and great mercies more than ordinary Thankfulness.

Sect. 13. *Secondly*, That having thus humbled her self before God by inward Contrition, she also make an outward free Confession of her said sins, to him, to whom God hath delegated a Ministerial Power to remit sins, that she may receive Comfort and Absolution from his Mouth; I mean the Priest: and this I think meetest to be done to the Bishop of the Diocess, with one or more of his *Presbytery*, such as he shall think good to take to him to assist him; or else to some other by his appointment; Because the Bishop is the chief Pastor, to whom the care of Souls most immediately belongeth, within his own Diocess: besides that both the quality of the person, (if she be of eminent Place, and Rank) and the weightiness of the case, make it so much the more proper for his *cognisance:* But howsoever it

should be done to a Man of *approved Wisdom*, and such an one as will be both compassionate and secret, wherein the more freely she shall make confession of her said sins, and the more chearfully she shall subject her self to perform such further Acts, whether of *Humiliation* or *Charity*, as the Bishop or Priest shall advise to be done, in testimony of her *unfeigned Repentance*, the more sound comfort undoubtedly will the *sentence* of *Absolution* bring unto the *Soul*.

Sect. 14. This done, then *thirdly*, that she endeavour by all *fair means*, that the Gentleman also her *Friend* and *Partner*, in the aforesaid Promise, may be brought to the like sight and acknowledgment of the great sins that were enwrapped in that *act*, and to a true persuasion withal, that so long as he continueth in the former unlawful affection and resolution, he is not only still under the guilt of those sins, but also in *near danger* (without God's great mercy preventing it) of falling into other and greater sins, for which purpose it will be expedient, that he be truly and effectually dealt withal, (yet with as much *lenity* as the *state* of his *Soul* will suffer, and with all possible secresie) and that by some such person especially as he holdeth

holdeth a *reverend Opinion* of both for *Learning* and *Piety*; and to procure that this be done, the Gentlewoman ought to take it into her own ſpecial care; which it will concern her to do, not only in Chriſtian Charity for the good of his Soul, but in *Chriſtian Wiſdom* alſo for her own future *benefit* and *ſecurity*.

Sect. 15. For when he ſhall be once throughly convinced in his judgment and conſcience of the unlawfulneſs of the Promiſe made between them, and of the ſinful inconveniences that attend the *continued purpoſe* of *fulfilling* it, there is a fair way open for that which is *next* and *fourthly* to be done, *viz.* That he be then earneſtly moved for his *Relaxation* of the ſaid *Promiſe* to the Gentlewoman, which (being it was but a *meer Promiſe*, and no *Vow*, as in the *firſt Point* hath already been ſhewed) he hath in himſelf a *full power* to make, and this alſo to be done in the *preſence* of ſuch Perſons, as they ſhall make choice of betwixt themſelves to be *witneſſes* of the ſaid *Releaſe*; for although the Promiſe being *utterly unlawful*, hath no power to bind, and ſo there needeth no *Releaſe*, as of abſolute neceſſity, in regard of the thing it ſelf; yet ſuch *Releaſe* may be

very *behoveful* in regard of the Gentlewomans person, and for the quieting of her conscience, in case there should remain any fears or scruples behind, lest perhaps her *promise* should *still bind* her; for as *Satan* laboureth to *benum* the *Conscience* with *security*, to make Men bold to commit sins without scruple, till he hath drawn them into the *snare*; so when he seeth them offer to get out of the *snare* again by *Repentance*, he is very cunning to inject *needless scruples* and *fears*, if possibly he can, to hold them in by means thereof; wherefore I hold it very expedient, that such a *Release*, if it may be obtained, be not neglected; for thereby the binding power of the *Promise*, though we should suppose it lawful, should be quite taken away, so as there need no scruple to remain: *Abundans Cautela non nocet*, is a safe *Aphorism*; as wary Men when they pay monies, besides seeing the *Book* crost, will crave to have an *Acquittance*: So it may be some *satisfaction* to the Gentlewomans mind, to have a solemn *Release* before *witness*, which say it should be more than needeth, yet can do no harm howsoever.

Sect. 16. *Fifthly*, that the Gentlewoman all the while before, and so ever after (that time

time only excepted, when the *Relaxation* should be made, for then it is requisite she should be personally present) carefully avoid the company of that Gentleman, and *he* likewise *hers*, so far as conveniently may be; but at leastwise, by no means *converse together* with any familiarity, especially in private; lest the former *unlawful affection* should rekindle in either Party, and so the *disease* after some measure of *Cure* grow to a *relapse*, which many times proves more dangerous than the *first malady*; for commonly when the *unclean spirit* is ejected by *Repentance*, if once he make himself *master* of the *heart* again (as he will attempt it, and without a good watch haply effect it) he will be sure at the *re-entry*, to come with a *new strength*, and that *seven-fold* to what he had before, and *needs must the end of that Man be worse than the beginning:* she must therefore resolve to shun all *likely occasions* of falling again into the same snare, so far as the quality of her person and condition, and the *common affairs* of *life* will permit: And she had need also to use her best care and diligence (praying to God daily for Grace to strengthen her thereunto) to *withstand* all *wicked temptations* of the *flesh*, that

she be no more *foiled* thereby, neither *entangled* again in such *sinful inconveniences*, as by God's Mercy she shall be now *freed* from.

Sect. 17. If in these *Directions*, I be thought to *deal* with too much *rigour* and *strictness*, it would be considered:

First, That it's much better to put the *Patient* to a little more pain at the first, than by *skinning* the wound over, to heal it deceitfully; and to suffer it to *rankle inward*; which will breed a great deal more *grief* at last.

Secondly, That since all Men (through corrupt *Self love*, and privy *Hypocrisie*, cleaving to our *depraved nature*) are *partial* towards *themselves*, and apt to deal more *favourably* with their own sins, than they ought; it is therefore safest for them (in their own Cases especially) to incline to *severity* rather than *indulgence*.

Thirdly, That there may be a *mitigation* used of the *present Directions*, according as the state of the *Patient* (in the several variations thereof) shall require; but that (for the avoiding of *partiality*) not to be permitted to the *sole liberty* of the *party herself*, but rather to be done by the *advice* of a *Ghostly*

Ghostly Physitian, who, if he be a Man of such *wisdom* and *moderation* as is meet, will I doubt not allow a greater *indulgence* in case he see it expedient, than it could be safe for the Party her self to take of her own head.

Fourthly, That in all this Discourse, I take not upon me to write *Edicts*, but to give my advice, that is to say, not to prescribe to the *judgment* of others, if any shall see cause to *dissent*, but to deliver my *own opinion* (being requested thereunto by a Reverend Friend) with such a *faithfulness* and *freedom* as becometh me to do; and truly those Parties whom it most concerneth, ought not to *blame* me for it howsoever; in as much as there can be no cause to *suspect* that I should be carried with any *personal respects* to be *partial* either for or against either of them; so God is my witness, whom I desire to serve, I had not any intimation at all given me, neither yet have so much as the least conjecture in the World, who either of them both might be.

The CASE of a MILITARY LIFE.

SIR,

IN referring over your Friend to me, you have pitched upon one of the unfitteſt perſons in the World, to be conſulted in caſes of that nature, who am altogether a ſtranger to the *Publick Affairs* of *Chriſtendom*, and underſtand nothing at all of the mutual *Intereſts*, *Relations*, or *Tranſactions* of *Forein Princes* or *States*; yea, ſo little curious have I been to inform my ſelf, ſo much as where the *Stages* lay of the chiefeſt *Actions* of theſe latter times abroad, or what perſons were engaged therein; that I have ſomething pleaſed my ſelf (perhaps too much) with my *own ignorance* in our *home Affairs*, accounting it among the *happineſſes* of my *privacy* and *retiredneſs*, in theſe *unhappy times*; that amidſt ſo much *fury* and *bloodſhed* on every ſide, it was never my hap to be within the view of any *Battel* or *Skirmiſh*; nor did I ever ſee ſo much as a *Piſtol* diſcharged, or a *Sword* drawn againſt any ſingle perſon,

person, since the beginning of the *War*. I could have wished therefore, since my opinion herein is desired, that I had had the opportunity to have advised with some more knowing Men, and of greater experience and judgment than my self in these *matters*; or at least, that you had sent me, together with the two inclosed Letters, a transcript of your Answer (whose judgment I do with great reason very much *value*) unto the former of them; for there I assure my self, I should have met with such *Materials* as would have served me for a good *foundation* to work upon; ye to satisfie your desire, so far as in me lieth, and the rather for the *Gentlemans* sake your friend, (who though *unknown* to me by face, or till the receipt of your Letter, so much as by Name; yet by his Letters appeareth to be a person of Piety and Ingenuity, and a great Master both of *Reason* and *Language*) I have endeavoured (with reservation of place for second thoughts, and submission to other Judgments) to declare what my present *apprehensions* are concerning the whole business; wherein the *resolution* of such doubts, as in point of *Conscience* may arise, or of the *most* and *chiefest* of them, will (as I conceive) very much depend upon the

the consideration and right application of these *Four things*, viz.

I. *The different sorts of Mens imployments in general.*

II. *The nature of the Soldiers imployments in particular.*

III. *The end that Men may propose to themselves in following the War; or what it is that chiefly induceth them thereto.*

IV. *The condition of the Person so imployed, or to be imployed.*

I. *Considerations of Mens Imployment in General.*

1. MENS *imployments* are of two sorts. The *one* of such as any Man may (without blame from *others*, or scruple within himself) follow, meerly upon his own *score*, if he find himself in some measure able for it, and have a mind thereunto; he hath a power in himself (and that *jure proprio*, by a *primitive* and *original right*, without any necessary *derivation* from others) to dispose of himself, his time and industry in that way; for the exercise of which power, there

there needeth no special or positive *warrant* from any other person, but it is presumed he is, (as in relation to others) sufficiently warranted thereunto in this, in that he is not by any *Superiour Authority*, Divine or Humane, forbidden so to do; and upon this account it is, that Men betake themselves, upon their own *choice* and *liking*, to *Husbandry*, *Merchandize*, *Manual Occupations*, the *study of the Law*, &c.

2. But *another sort* of *Imployments* there are, whereunto a Man hath not a *just right* primitively, and of himself, neither may he *lawfully exercise* the same meerly upon his own choice, but it is necessary, that that power should be derived upon him from some such person or persons, as have sufficient Authority to warrant him for so doing: Such is the *Imployment* of a *Judge*, a *Constable*, an *Arbitrator*, &c. which are therefore said to be *juris delegati*, because the right that any Man hath to such *Imployments*, accrueth unto him by virtue of that Authority which he receiveth by *Delegation* or *Deputation* from some other that hath a right by *Command*, *Election*, *Nomination*, or otherwise to *Impower* him thereunto, whence are those usual forms, *Quo jure*, *Quo warranto? Who made*

made thee a Judge? By what Authority doſt thou thoſe things? Or, *Who gave thee this Authority?* A Man may betake himſelf to the *Study*, and ſo to the *Practice* of the *Laws*, of his own accord, but he may not take upon him to be a *Judge*, without *Commiſſion* from his *Sovereign*; ſo he may follow *Husbandry*, and *Merchandry*, upon his own choice, but he may not do the Office of a *Conſtable*, unleſs he be choſen by the *Neighbours*; or of an *Arbitrator*, unleſs choſen by the Parties thereunto.

3. Now, although as well the one ſort as the other, after a Man hath addicted himſelf to the one, or is deputed to the other, may not unfitly be termed his *Particular Calling*, and the *latter* perhaps with better *propriety* than the former, (for the word *Calling* properly importeth the *Action* of ſome other perſon) yet according to the common Notion, which by cuſtom of ſpeech among us, we have of theſe terms [*The General and the Particular Calling*] the *Imployment* of the *former ſort*, are uſually taken to be the *Particular Calling* of Men, and thoſe of the *latter ſort*, will be found (if well conſidered) to fall rather under the *General Calling*, as branches or parts thereof, in as much

much as the exercise of such Imployments, is a part of that *moral duty*, which all Men (according to their several respective Relations) ought to perform to others, being by them *impowered* thereunto, upon the tie of *Obedience*, *Contract*, *Friendship*, &c. but for *distinction sake*, as the *Latines* make a difference between *vitæ institutum* and *munus*, we may call those of the *former sort*, *Mans Profession*, and those of the *latter sort* his *Office*; so a Man is by *Profession* a *Lawyer*, by *Office* a *Judge*; by *Profession* an *Husbandman*, by *Office* a *Constable*.

4. To bring this *Discourse* home to the *present business*, we are next to enquire, to whether sort of the two, the Imployment of a *Soldier* doth more properly appertain; that is, whether we are to conceive of it as a *Profession* which a Man may at his *own choice* fix upon, as his *particular vocation*; or rather as an *office* of *duty* and *service*, which he is to *undergo*, when by the *command* of his *Prince*, he shall be thereto *appointed*, and so to come rather under the notion of a *General Calling*? To me it seemeth clearly to be of the *latter sort*. For, (1.) in the passage of St. *Paul*, 2 *Tim.* 2. 4. *No Man that warreth, entangleth himself in the affairs of this life, that he*

he may please him that hath chosen him to be a Soldier; the word is στρατολογήσαντι, applied to him that *warreth* with the *note* of *Universality* (ὐδεὶς στρατεύομενος) *annexed*, seemeth to imply, as if he *supposed* that no Man might go to *War*, unless he were *chosen* for that *service* by some other person that might command it. Nor do I see (2.) what good construction can be otherwise made of that *speech* of our Saviour, *Matth.*29.57. *All they that take the Sword, shall perish with the Sword*; or what should be the crime there intended to be signified, by this Phrase of *taking the Sword*, if it be not *this*, for a Man to *take* the *Sword* into his *hand* by his *own Authority*, before it be *put* into his *hand* by that *Supreme Power*, whom God hath immediately *trusted* with the *bearing* and *managing* of it. Nor, (3.) can that be said to be a *Mans Profession*, or *particular Calling*, which Men of all Professions are (in *obedience* to their *Governors*, and for the *service* of their *Country*) *bound* to *perform* whensoever they shall be by *Lawful Authority*, *called* and *appointed* thereunto.

5. If these *premises* will be *granted*, it will soon appear, that the *Answer* to the *Question proposed*, in the beginning of the former

mer Letter (as it ſtandeth there *in Terminis*, and *in Theſi*, abſtracted from the *conſideration* of the *perſon* in the ſaid Letter *charactered*, and thoſe other *circumſtances* which may *vary* the *Caſe*) muſt be in the *Negative*; viz. *That it is not lawful to be a Soldier, upon the ſame account that Men apply themſelves to Trades, and the practice of the Laws, and to other (like) civil Imployments.*

II. *Conſideration of the Souldiers Imployment in particular.*

1. THE *care* that ought to be in every Man that *taketh* upon him the *exerciſe* of any *Office*, to be well aſſured that he hath a *ſufficient right* and *warrant* for ſo doing, is no leſs requiſite in a *Soldier*, than any other Officer; yea rather by ſo much more requiſite in him, than in moſt of them, by how much the matter he is converſant about, (*viz. the Life of Man*) is of *greater conſequence*, than are the matters in which moſt of them are imployed; for the Soldier every time he draweth his Sword in the Field, is by the very nature of his Imployment

ployment supposed to do it either with a *resolution* to lose his own, or to take away his *Enemies life*, else he doth but *prevaricate*, and is *unfaithful* in the *Service* he has undertaken: In which *service*, if it be his fortune either to kill, or to be killed, he is actually and deeply guilty; but if neither, yet that very *resolution* maketh him intentionally guilty of the Transgression of the sixth Commandment, *Thou shalt not kill*; in case he have no *good right*, so far to dispose either of his own, or the others life. It concerneth him therefore to look well to that; both what Power belongeth to him, as a Soldier, and by what Authority he claimeth the exercise of such a power.

2, Most certain it is, that properly and originally the *power* to *dispose* of Mans Life (*Jus vitæ & necis*) belongeth to *God alone*, who is, *Dominus vitæ & necis*, as the *sole Author* of *Life*, so the *sole Lord* and *Master* of *Life* and *Death*: some part of which *power*, since it hath pleased him for the good of *humane Society* (in the preservation of *Peace* and *Justice*, and the punishment of such as are enemies to either) to communicate unto Men, (which power so communicated, is that which we use to call *Jus gladii*, or the

power

power of the Sword) it may therefore be *lawfully exercised* by Men; but within that *latitude*, and in *order*, as God hath communicated it to them, but not farther nor otherwise.

3. Now God hath not given to any Man, either *Sovereign* or *Subject*, power over his own life, to destroy it by his *own voluntary act* in any Case; no, nor yet power to expose it to the certain hazard of being destroyed by another in *fight*, saving in the one only Case of *just* and *necessary defence*: under which *notion* is to be comprehended also the hazarding of the *Princes Life*, in a *just* and *necessary War*; out of which Case, whosoever shall *expose* his *life* to hazard, by *fight*, of his *own accord*; if he *perish* in it, cannot be *excused* from being guilty of his *own death*, nor from usurping a power over his own *life*, which God hath not allowed.

4. Add hereunto the *injustice*, that he thereby doth to his *Sovereign* and *Country*. God hath given to his *Vicegerents* here on Earth, a *right in*, and a *power over* the persons of all their Subjects, within their several respective Dominions, even to the *spending* of their *Lives* in their *Countries service*, whensoever they shall be by their *Authority*

required thereunto, which they cannot therefore *prodigally spend* at their *own pleasure*, without *apparent wrong* done to their *Governors* interest; for as he that shall kill a *private person*, is not only an *offender* against God, and against that person, in depriving him of *life*; but is also by the Interpretation of the Laws, (according to the importance of the ancient form of Enditing) an *offender* against the *Crown* and *Dignity* of his *Sovereign*, in depriving him of a *Subject*, and consequently of the *interest* he had in his *person*, and of the use he might have had of his *service*: so he that is so *prodigal* of his *own life*, as to hazard it upon the *Sword* in *fight*, without his *Soveraigns Authority*, if he perish, is not only *guilty* of his being *accessary* to his *own destruction*; but doth also an act injurious and prejudicial to his *Sovereign*, at whose *service* and *disposal* (under God) his *life* and *person* ought to be.

5. And as his *presumption* cannot be *excused*, if he be slain upon that account; so neither can he *justifie* the *killing* of another (though an enemy) in *Battel*, if he have no other *warrant* for taking of *Arms*, than from himself; for War is a kind of Judicature, wherein the Prince that wageth the War,

is

is as the Judg that giveth ſentence of death againſt the Enemy, as a diſturber of the Peace of his Country, and all that ingage in the War under him, are but as ſo many executioners of the ſentence pronounced by him; and he that executeth the ſentence of death upon an another, muſt do it by ſome *lawful Authority*, as well as he that pronounceth the ſentence; or elſe he is a *Murtherer* as well as *This*. Now the Soldier that by fighting on the one ſide, doth *ipſo facto* declare againſt thoſe of the other ſide, as Enemies; if he ſo engage of his own mind only, he doth indeed, upon the point, take upon him the Office of a *Judg*, being none, and ſo *runneth* before he be ſent: or if it ſhall be ſaid in his behalf, That he doth it not as a Judg, but as the Executioner of the ſentence pronounced by that Prince, into whoſe ſervice he hath put himſelf, and who by the accepting of his ſervice hath ſufficiently authorized him to ſuch Execution: Your Letter hath ſuggeſted to me this ready Anſwer, *That the ſentence pronounced by one that is not his Lawful Sovereign, and by conſequence, whoſe judgment he is not warranted to follow, is of no more validity* (as in relation to him) *than* Sententia lata à non judice,

and therefore can be no warrant to him to execute it. True it is, that with *licence* from his *Sovereign*, he may serve under another Prince, and consequently do such execution as we now speak of; because the Sovereign by so licensing him, doth really refer him over from himself to *anothers judgment*, and consequently warrant him to follow the same, and so render him capable (upon the others acceptance) to execute it. All this is true, but nothing to our purpose, because it doth *destruere suppositum*; for we now suppose the Case of a *Soldier* putting himself into service, under a *Foreiner* of his own mind, and where *himself thinketh good*, without the *knowledg* or *licence* of his own *lawful Sovereign.*

III. *Consideration of the end to be proposed by the Soldier.*

1. SITH the *goodness* or *badness* of Mens *actions* and undertakings dependeth very much upon the end which they propose to themselves therein; he that would desire to lead a *Soldiers life*, must narrowly examine his own heart, what it is, *bona fide*, and

and in very deed, that firſt and chiefly induced him to that deſire, and what *affinity* there is between that end, which he propoſeth to himſelf, as the main ſcope of his Intentions, and that which is or ought to be the *true end* of the thing it ſelf; the true end of the War, which only can warrant it *lawful*, we all know is the neceſſary *preſervation* of a *Common-wealth* in *Peace*, by repreſſing (or preventing) all *Seditious*, or *Hoſtile attempts* to the contrary; but as in other things it often happeneth, according to that ſaying, [*Finis non idem eſt artis & artificis*] ſo here many times the Warrior hath another *end* to himſelf far diſtant from that of War, and the more *diſtant* ever the worſe; as on the contrary, the *action* is ever by ſo much the *better*, by how much the *intention* of the perſon hath a *nearer affinity with*, or a *directer tendency unto*, that for which the thing it ſelf was *ordained*.

2. Now the *ends* which Men, deſirous to follow the Wars, do uſually propoſe to themſelves in ſo doing, are eſpecially one of theſe Three, *Lucre*, *Honor*, or *to do their Country ſervice*; concerning which, we are to enquire ſeverally, whether or no and how far forth any of theſe may be a *ſufficient inducement*

ducement to a *Christian*, or but *moral Man*, to follow the Wars, as his *particular Calling* or *Profession*.

3. For *Lucre* first: He that hath a *warrant* otherwise to imploy himself as a *Soldier*, may doubtless lawfully both *receive pay*, and *require* it; *John the Baptist* allowed the *Soldiers* τὰ ὀψώνια, *Luk.* 3. 14. And St. *Paul* thought it not reasonable, that any Man should go to *warfare at his own charges*; 1 *Cor.* 9.7. Not so only, but he may also, in putting himself upon that *imployment*, (being called thereunto) have an *eye* to his *profit*, and an *actual intention* (if moderate, and otherwise rightly qualified) of getting himself a *livelihood*, yea, and of *raising himself* a fortune (as we call it) by his *service* therein; even as Men in the choice of other Professions, or undertaking Offices usually do, and may do without sin; but to propose to himself *Lucre*, as the *main end* and *scope* of following the Wars (as it is evident by their actions, that very many of our Common Soldiers do) is one of the most *hateful* and *unrighteous* things in the World: so far is it from being a *sufficient inducement* to any Man to make that his *Profession*. How can it be imagined to be consistent with that *Charity*,

Justice

Juſtice, and *Moderation*, that ſhould be in every *Chriſtian* to ſet up a *Trade* of *killing of Men* for Mony? The meer *Mercenary Soldier* therefore, or a *Soldier* of *Fortune* (as we call him) I find every where inveigh'd againſt as one of the greateſt Scourges or Plagues of Mankind; for ſuch Men never look at the Cauſe they engage for, whether it be right or wrong; but at the *pay* and *prey*; and therefore they take their beſt Markets, and care not whom they *undo*, *kill*, and *oppreſs*, by *Violence*, *Rapine*, *Murther*, and *Plunder*, ſo that they may but enrich themſelves thereby, and can do it with ſafety: Nor will they ſtick, if there be an advantage to be made of it; and that they can ſpy a fit opportunity for it, either to betray their own party, or to revolt to the other ſide, or to do any other act, though never ſo baſe and diſhoneſt, *Nulla fides pietaſque viris qui caſtra ſequuntur.*

4. Next the intuition of Honour and Glory to be acquired by *worthy Actions* in the *Wars*, may be not only lawful, but commendable alſo and uſeful in a *Soldier*; and truly this of *Glory* is a more *noble end*, of a higher pitch, and more befitting a generous ſpirit by much than that of *Lucre* is: both

becauſe Men of eminent *Birth*, and *Place*, and *Parts*, are apteſt to be affected with it; whereas *Gain* worketh moſt upon the lower ſort of Men, and alſo becauſe it putteth Men upon more worthy Enterprizes, and ſuch as may win *Honour* and *Reputation*; and reſtraineth them from thoſe baſer acts of *Injuſtice*, *Cruelty*, and *Rapine*, to which the deſire of *Gain* uſually prompteth the *Mercenary* Man; but yet as to the warranting of the *Soldier* for making that his *Profeſſion*, (which is the Point now in hand) this of *Glory* is of no more importance than was that of *Gain*; for the right end of *War*, being a *ſafe* and *honorable Peace*, there is ſomething common to both (conſequential to the deſire of *Glory* as well as of *Gain*) ſo inconſiſtent with that end, that it ſetteth them at an equal, or not much unequal diſtance therefrom: For as he that aimeth to gain by the Wars, cannot but deſire the continuance of War, that ſo his hopes of gain may continue; ſo he that aimeth to get himſelf Glory by the Wars, cannot but deſire the continuance of War, that ſo the opportunities of increaſing his *Glory* may continue; for there is a *Dropſie* of vain-glory in the *Ambitious*, as well as of *Avarice*

Avarice in the *Covetous*, as *thirſty* and *unſatiable* in the *one*, as in the *other*; whence it cometh to paſs, that both the *one* and the *other* uſe their utmoſt wits and endeavours to find occaſions to lengthen the Wars, and to *obſtruct* and *retard* (ſo much as lieth in them) the advices of *Peace*: Nay, let me add moreover, that in this reſpect at leaſt (*viz.* as to the effectual hindring of Peace) that of *Honour* and *Glory*, is much the more dangerous end of the two; becauſe his humour is apteſt to ſeize upon the *greateſt Perſons*, and ſuch as by privilege of their *birth*, eminency of their *places*, activeneſs of their *Spirits*, glory of their *former actions*, or other like advantages bear a great ſway in *Councils*, and are of ſome authority in the *Armies*: whereas the *Peaſantry*, in whom moſt of the other *humor* (that of baſe *Lucre*) aboundeth, have neither the *wit* nor the *power* ordinarily to do much harm. It hath therefore been a conſtant obſervation in all times and places, that the embroyling moſt *Common-wealths* in Wars, in the mean time, and working their ruine in the end, hath grown from the reſtleſneſs of ſome ambitious ſpirits, and

their

their immoderate thirſt after *Honour* and *Glory*.

———*Patriam tamen obruit olim*
Gloria paucorum, & laudis titulique cupido.
Juvenal Sat. 10.

5. So that if there be any poſſibility of finding a perſon capable to take upon him the imployment of a *Soldier*, as his proper *Profeſſion*, it muſt be among thoſe that propoſe to themſelves the ſame end therein, that is, or ought to be the *end of War*; that is to ſay, thoſe that after an impartial ſearch of their own hearts, can truly ſay (and not pretend it only) *That their chiefeſt aim in applying themſelves to the Wars, is to do their King and Country ſervice, in procuring or preſerving the Peace thereof*, which no Man can truly ſay, but he that preferreth the *Publick Good*, and the *Peace* of his *Country*, before all *private Intereſts*. The tryal whereof is, if he take up Arms with this *Reſolution*, and by his after-carriage make it *good*, not to do any *act*, or enterprize any thing for his own *benefit*, *glory* or *ſafety* that may hinder, nor to refuſe any ſervice or hazard that may probably promote the obtaining that end: which

which qualification supposed, I deny not but that a Man may find warrant to go on in the way of a *Soldier* as his proper *Profession*, and that in two Cases.

6. First, that which (in the nature of the *Imployment* it self) is rather an *Office* than a *Profession* (such as we have already shown the *Soldiers* imployment to be) may yet become to the person so imployed, as his proper *Profession*, if he shall be appointed thereunto by the *lawful Authority*; especially if it be done with a declared intention (whether expresly or interpretatively declared) of continuing him for life, or for any long space in the same; and that the said imployment during such his continuance therein, shall require his personal attendance, either constantly or for the most part: As for example, a *Lawyer* by Profession and Practice, is by his *Sovereign* called to be a *Judg* of either Bench, or a *Baron* of the *Exchequer*, the *Office* of a *Judg* is now become his *Profession*, or *particular Vocation*, because it is supposed that he is to continue in that Office; and the execution of that Office will require his attendance thereupon, in the yearly *Terms* and *Circuits*: but if the *King* shall appoint a *Serjeant* or *Counsellor* at the Law, by his

his particular *Commission* to ride this *Summers Circuit*, into such and such Countries, and there to execute the *Office* of a *Judge*, the Party so *constituted* and *appointed*, hath by virtue of that *Commission*, full power to do the Office of *Judg* in that *Circuit*, and is to be received and honoured with the title of *Lord* and all other testimonies of *honour* and *respect*, in as much ample manner as other *Judges* in their *Circuits* are; yet doth he not thereby come to be *denominated* a *Judg*, as if that were his proper *Profession*, or ordinary *Calling*, as in the former Case; because he is *impower'd to execute the office of a Judg*, but during the time of that *Circuit* only: Nor is his *attendance* upon that Office any longer required, or so much as allowed him. In like manner, if the King of *England* shall make choice of some person of Quality to be *Governor* of *Dover Castle*, or of *Barwick*, that Office then is as his *Profession*, or *particular Calling*; because it is to be supposed, he is to continue in that *imployment*, and to *attend* the same until the Kings pleasure be further known therein: but if the King upon some sudden *Insurrection* and *Invasion* should raise any Army, and make choice of some person of like Quality to

to have the *Conduct* thereof, for the *Suppressing* or *Repelling* such *Insurrection* or *Invasion*, his *Imployment* in that service being but *temporary*, and to determine as soon as the business were ended, should not otherwise than in courtesie denominate him a General; or at least not to be *esteemed* as his permanent profession, but only as a *transient Office*. This is one Case.

The other Case (which is more pertinent to the business of these Letters) is of such as desire to *imploy themselves* in the exercise of Arms in *Foreign Service*, that they may attain to such knowledg or experience in the *Art Military*, as might the better enable them to do their King and Country Service, whensoever there should be need thereof; for since the *Managery* of War is long since grown into an Art, and that not to be learned from Books, or from *private study*; but to be acquired by much *practice* and *experience*, and diligent *observation*: and the rather for that the particular *Rules* of that *Art*, do not stand at such a certain stay as those of most other Arts do, but are daily altered and improved by new Inventions: It is very necessary for every *State* to be well provided of a good number of such persons

sons of their own Nation, as should be expert and skilful in that Art; lest they should be forced, if an unexpected War should happen, to call in *Foreiners* for *assistance*, which is both dishonorable and dangerous: the necessity hereof too well appeareth by the evil consequents of the neglect of it in this *Nation* in these *latter times*, especially in the *Reigns* of the *two last Kings*, by reason of the *long Peace*; and (which commonly breedeth out of it as the *rust* and *canker* thereof) tenderness of Education and voluptuous living. The *Nobility* and *Gentry* of *England*, in the generality of them, had so much *degenerated* from the *Martial Prowess* of their *Ancestors* renowned in all *Histories*, that in the beginning of these *unnatural Wars*, there were very few to be found of our own *Nobility* and *Gentry*, fit to have *Command* in an *Army*, or that knew any thing belonging to the *Art* of *War*; insomuch that use was made on both sides of *Mercenary Men*, and most of them *Scots*, who being for the most part bred up abroad (in *France* especially, a place of much action) had learned experience more than our *English* had in such matters, by which *advantage* they had so wound themselves into the *chief Places of Command*, and had such

such an *influence* into the *Councils* of both sides, that the *War* was in a manner *wholly ordered* by their *directions*, witness the great power that *Ruthen*, *Urrey*, *King*, *Meldram*, &c. had in the Armies on either side.

8. The weightiness then of *Princes Affairs*, upon all *emergent occasions*, rendring it necessary for them, not only to have *Power* to *command* their *Subjects* of whatsoever Rank or Profession to serve as *Soldiers* in their Wars; but also to provide aforehand for a supply of *able Men*, both for places of *Command*, and to execute other parts of that *service*, which cannot be done, unless a considerable number of persons be trained up in the exercise of *Arms*, and bred *Soldiers*: It is consequently necessary, that some persons be, either by their Authority appointed, or at least by their permission allowed to addict themselves to a *Military course of life*, as their proper *Profession* and *Calling*, which *Authority* or *Permission* from their *Sovereign*, will sufficiently warrant to their *Conscience* the choice of that *Profession*; supposing (as now we do) that the intention be right, the person meetly qualified, and all other *Cautions* in respect of the *matter*, *manner*, *circumstances*, and otherwise, duly observed.

9. The

9. The necessity of learning this *Art* granted, there may sometimes follow a further necessity, *viz.* of learning it abroad, and after it is learned, of *exercising* it *abroad*; and in *Forein service*, and that in these two *Cases:* First, when the Soldiers own *Country*, whereunto his service is principally, and in the first place *due*, hath either the *happiness* to be in a *setled Peace* and *Freedom*, under the *Government* of a *lawful Sovereign*; or the *unhappiness* to be in such *servitude*, through the prevalency of an *Usurping Power*, that no *resistance* can be made there-against; for in the former Case, there is no *exercise* at all of the *Soldiers faculty* in earnest; and of what little avail to the attaining of any *solid knowledg*, or *experience* in the *Art Military*, such superficial *trainings*, as were used (and those but very seldom neither) by the *Lieutenants* of the several *Counties* here in *England*, with the *Country Captains* and *Muster-Masters* are, (beside that our own reason will tell us) the *Rawness* and *Unserviceableness* of our *Trained-Bands* in the beginning of the *late Wars* did abundantly *manifest:* and in the latter Case, the *Soldier*, if he will have *Imployment* at home, must either *engage* on the behalf of an *unjust*

Power

Power, or else run upon his own certain destruction to no purpose.

IV. *Consideration of the Condition of the Person.*

1. THis must be considered too; for the different conditions of *persons* may make a great difference in the *lawfulness* or *unlawfulness* of their *actions*, according to the *old saying*, which holdeth true in this sense also, no less than in *that other*, in which it is commonly used, relating to mens corrupt partialities, *Duo cum faciunt idem, non est idem.* In your Friends second Letter, I find a *demand* made (as in the way of *Reply* to some passage of your *Answer* to his first Letter) to this purpose; Suppose *two great Princes* (as *France* and *Spain*, for instance) have had *long Wars* together, and the *justice* of the *Cause* appear neither more nor less, on the *one side*, than the *other*; if in case a *third Prince*, or *State*, out of a sincere desire to *establish* the *Peace* of *Christendom*, after other *offers* and *mediations* for that purpose made in vain, might lawfully *joyn* in *Arms* with

the *one party* to force the *other* to *Peace*, why a *private perſon* might not as lawfully (having the ſame intention) enter into *Arms* for the ſame purpoſe; and the reaſon of *demand* thereof is, becauſe every *Prince* or *State* is (in relation to other Princes and States) but as one *private Man* to *another*; for being called to the *Regiment* of his *own People* only, he is but as a *private Man* in *Aliena Republica*.

2. But that there is a great *difference* between a *Sovereign Prince* and a *private Perſon* in this affair, it cannot be denied; inſomuch that I find in the very ſame paſſage (put in as it were by way of *Objection*) three very conſiderable differences. Firſt, That Princes may, and ſometimes are obliged by Articles and Covenants, for the defence of their Allies, to take up Arms, which cannot be the caſe of *private Men*. Secondly, That *Princes* may ſee cauſe to ſet in for their own ſafety and intereſt, leſt the *prevailing Party* might grow *too Potent*, and ſo themſelves might be *oppreſſed* by him. Thirdly, there is a greater probability in a Prince of compaſſing that Noble and Glorious end, *The Peace of Chriſtendom*, than can be in a *private Man*. All theſe differences are allowed there

there as true; but yet excepted against, as not contributing any thing to the *justice* of the Cause, which is here the Question.

3. If these do not, yet a *Fourth difference* there is, that will (as I conceive) manifestly contribute thereunto, to wit, that *Jus Belli*, is *Penes Principem solum*: in the business of War, *Princes* have *judicial*, *private Men* an *executive power* only; and he that hath no power but to execute the Sentence of a Judge, is bound to wait the *Judges Sentence* before he offer to act; otherwise he shall act beyond his lawful power, which is unjust: Not but that a *Prince*, if he raise a War where he ought not, is unjust too; even as a Judge is unjust, which pronounceth a *wrong Sentence*: but herein is the difference between them for taking up of Arms. The Prince having *jus agendi* in that behalf, may do it justly, and he may do it unjustly; yet where he doth it unjustly, he doth but *abuti jure suo*: but the *private person*, not having *jus agendi*, in that respect cannot (without the *Authority* of the *Sovereign*) do it otherwise than *unjustly*; because in so doing, he doth without leave *uti jure alieno*, which is always unjust. It is one thing for a Man to use (whether well or ill) a power that of

right belongeth to him; and another to *assume* a *power* that of right, belongeth *not to him*; the *one* is not *unjust*, unless he *abuse* his Power, the *other is*, if he *use* it at all.

4. Neither perhaps will the Reason alledged to the contrary (*viz.*) that a Prince in point of Justice and Power, is in *Aliena republica*, but as a *private person*) bear so much weight as is laid upon it, if one Point be well considered, which I think will prove a truth, tho it be very tenderly handled; otherwise it may prove very dangerous, both because it may seem a Paradox to those that have been little conversant in publick Affairs; as also, and especially, because it may, by racking it too high, be easily wrested to a mischievous construction, for the Patronage of any *Tyrannical action*; the point is this, that *Justitia politica*, and *Justitia privata*, have not in all the same adequate measure. *Princes* are bound to be just, as well as the *meanest private men* are, and obliged to keep Faith both with *Friends* and *Enemies*, every whit as *exactly* and *punctually*, without *equivocation*, *reservation*, or other *eluding devices*, as they; of all this no man doubteth: but it is not therefore necessary, that the *Rules* of *Justice*, whereby the *Counsels* and *Actions* of *Princes* and *States*, in

in their mutual Relations are to be measured, should be precisely *the same* with those which measure the *dealings* of Private Men one with another.

5. And the reason of the difference is evident: private Mens *Controversies* may be *decided*, and their *Injuries repressed* or *punished*, by the positive *Laws* of the *State*, whereof they are Members; and consequently *subject* to be ordered in all their dealings by those *Laws*; which *positive Laws* (together with the *Law* of *Nature*, and the *Divine Law*, which are common to all Men) are the *adequate Rule*, whereby the *Justice* of *private Persons*, and of their *Actions*, is to be measured; but since *Princes* and *States* are not subject to any such *positive Laws* common to them both, as may determine their Differences and Controversies: The great necessity of *Humane Affairs*, hath (for the good of Mankind in the preservation of Peace) introduced by the common consent of *Nations*, another *Law* of larger extent, that which we peculiarly call *Jus Gentium*, or the *Law of Nations* (whereof that which we call the *Law of Arms*, is one special part) by which *Law of Nations* (together with the *Law of Nature*, and the *Divine Law*, as aforesaid)

ſaid) the *Juſtice* of *Princes* and *States*, and of their *Actions*, is as by the proper adequate *Rule* thereof to be *meaſured*. Whence it cometh to paſs, that ſundry things are by the *Rules* of *Politick Juſtice* allowed as lawful and juſt betwgen *Princes*, which between *private Men*, would by the *Rules* of meer *moral Juſtice*, be condemned (and that deſervedly too) as unjuſt and unlawful: There are ſundry *Arcana Imperii*, ſome arts and ſimulations for maintaining *Intelligence abroad* for concealing and diſguiſing *Counſels at home*, in the Inſtructions of *Embaſſadors* and managing *Embaſſies*, in making *Alliances* and *Confederacies*, bnt eſpecially in the purſuance and effects of War, which ſeem much to ſwerve from the ordinary Precepts of *moral Juſtice*; which yet (*ſide integrâ & citra dolum malum*) are by the conſent of *Nations* allowed to be uſed, and ſo muſt be, or elſe there could be no ſecure living in the World in any *Society*, that ſaying of his *Atque ipſa utilitas juſti prope mater & æqui*, had ſomewhat of truth and reaſon in it.

6. The *truth* and *reaſonableneſs* of what hath been ſaid will appear (omitting many other) in theſe few Inſtances. *Firſt*, when a *Town* is taken by the *Enemy*, by the *Law of Nations*,

Nations, the spoil thereof falleth to the *Conqueror*, which if he give to the *Soldiery* to plunder (as usually is done) every *Soldier* thereby acquireth a *just Right* and *Dominion* in that which he can lay his hand on first, and take into his Possession. *Secondly*, It may sometimes concern a *Prince* or *State* in point of *Honour* or *Safety* to vindicate himself by *War*, for some wrong offered to his *Merchants*, or for some *Rudeness* or *Incivilities* done to his *Embassador* (for even these, in case *Reparation* be *demanded* and *denied*, have been ever held *just causes* of *War*; as *Amphitruo* in *Plautus* rendreth that as a sufficient reason of his War, *Nimis ferociter legatos nostros increpant*) in this case it is by the *Law of Nations* allowed him, not only to *fight* against the *Prince* himself, who yet only did the *wrong*, but to *waste* his *Country*, *fire* his *Towns* and *Villages*, and spoil thousands of his *innocent Subjects* of their *fortunes* and *lives* in pursuance of his *just revenge*; but if a *private Gentleman* wronged by his *Neighbour* should in like manner, in *revenge* of that *wrong*, *beat* his *Servants*, *vex* his *Tenants*, and seek his or their *undoing*, the *act* were palpably most *unchristian* and *unjust*. *Thirdly*, Since *potent Princes*, have for the most part,

great *Ambitions*, (and *Ambition* is a boundless *lust*) it behoveth a *Prince* for his *own safety*, to have a watchful eye over the *Motions* and *Designs* of a *potent Neighbour*, almost as much as of a *declared Enemy*; and therefore *wise Princes* have ever been careful by all *just means* to balance their *neighbour Princes* and *States* as near as they could; in such a proportion as might hinder the over-growth of any one above the rest: In order whereunto it hath been held *lawful* for a *Prince*, laying aside the consideration of the cause, to joyn in *Arms* with the *weaker*, for his assistance against his *Potent Adversary*, who else were likely in a short time to *swallow* him up, whereby he should become formidable and dangerous, as well to himself as to the other his *neighbour Princes* and *States*; upon which account alone, were there no other reason besides, it would be as just for all *Christian Princes* to compose their *own quarrels*, and to aid the *Venetian*, and *Hungarian*, *Persian*, or *Tartar*, against the *Turk*, as it is expedient and honourable for them so to do: but what is thus allowed *just* in the *waging* of *War* between *Princes*; if in a *wager* of *Law* a *private person* should attempt the like, *viz.* to assist with his Purse and Pains a Poor Man against

against a Rich, without considering the equity of the *Cause*, the *Act* were (as in the former instance) palpably *unjust* and *unchristian*: Instances might be produced many more to the same effect were it needful, but these I think sufficiently evidence the *truth* of what I undertook to shew in this particular.

7. There are also sundry other *circumstances* considerable concerning the *condition* of the *person*, which may render the same *undertaking unlawful* to one, which yet may be *lawful* for another, or more or less *expedient* or *inexpedient* for one than for another, supposing both *private persons* and *Subjects*; as namely, whether he be a person of Honour and Estate, or a Man of ordinary Rank and Fortune; whether a single-man, or Married? If Married, whether he have the consent of his Wife or no? and whether such *Consent* were a free and rational *Consent* in the Wife arising from a Judgment convinced of the fitness of the *undertaking*, or rather *wrung* from her by the importunity of the *Husband*, and her *facility* in *yielding* to the *potency* of his *desires* therein? whether the necessity of his *domestick Affairs*, and *Oeconomical Relations* will brook his *absence* for so long a time

time as must be spent in that Imployment; or will not rather require his *presence* and *care* for the *managery* thereof in the mean time? and an hundred other like *doubts* and *difficulties* meet to be taken into *deliberation*, and *unprejudicately* weighed against those other *probabilities* and *inducements* which at first kindled, and after fomented his desires, before he *imbarque* himself in that *Imployment*: and yet when all is done, it were safer for him (in my opinion) to *forbear* than to *proceed* in his *intentions*, unless he shall be assured, that he hath the *free allowance* of his *Sovereign*, thereunto either *expressed* (which would be the cleerest *warrant* for his *conscience*) or at least wise upon very pregnant grounds of probability *presumed*.

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The CASE of SCANDAL.

1. IN judging of *Cases* of *Scandal*, we are not so much to look at the *event*, what that is, or may be; as at the *cause* whence it cometh; for sometimes there is given *just cause* of *Scandal*, and yet no *Scandal* followeth, because it is not taken: sometimes *Scandal* is taken, and yet no *just cause given*; and sometimes there is both *cause* of *Scandal given*, and *Scandal* thereat *taken*: but no man is concerned in any *Scandal* that happeneth to another, by occasion of any thing *done* by him; neither is *chargeable* with it, farther than he is *guilty* of having *given it*. If then we *give Scandal* to others, and they *take* it not, we are to bear a share in the *blame* as well as *they*, and that a *deeper share* too, (*Væ homini, Wo to the Man by whom the Offence cometh*, Mat. 8.7.) but if they *take Offence* when we give none, it is a thing we cannot *help*, therefore the whole *blame* must lie upon them; wherefore if at any time any *doubt* shall arise in the *Case of Scandal*, how

how far forth the *danger* thereof *may*, or *may not oblige us* to the *doing* or *not doing* any thing *proposed*, the *Resolution* will come on much the *easier*; if we shall but rightly understand, what it is to *give Scandal*, or how many ways a Man may become guilty of *scandalizing another* by his *example*. The ways (as I conceive) are but these *four*.

2. The *first* is, when a Man doth something before another Man, which is in it self *evil*, *unlawful*, and *sinful*, in which *Case*, neither the intention of him that *doth it*, nor the *event*, as to him that seeth it done, is of any *consideration*; for it mattereth not whether the doer had an intention to draw the other into sin thereby, or not: neither doth it matter whether the other were thereby induced to commit sin or not: the *matter* or *substance* of the *action* being *evil*, and *done* before others, is sufficient to render the *doer guilty* of having *given Scandal*, though he had neither any intention himself so to do; nor were any person *actually scandalized* thereby; because whatsoever is in it self, and in its own nature evil, is also of it self, and in its own nature *scandalous*, and of *evil example*. Thus did *Hophni* and *Phineas* the Sons of *Eli*, give *Scandal* by their

wretched

wretched Prophaneſs and greedineſs about the *Sacrifices* of the *Lord*, and their *vile* and *ſhameleſs* abuſing the *Women*, 1 *Sam.* 1.17.22. And ſo did *David* alſo give great *Scandal* in the matter of *Uriah*, 2 *Sam.* 12. 14. Here the *Rule* is, *Do nothing that is evil, for fear of giving Scandal.*

3. The *ſecond* way, when a Man doth ſomething before another with a *direct* intention and *formal purpoſe* of drawing him thereby to commit ſin; in which Caſe, neither the matter of the *action*, nor the *event* is of any *conſideration*, for it maketh no difference (as to the ſin of *giving Scandal*) whether any Man be *effectually enticed* thereby to commit ſin, or not; neither doth it make any difference, whether the thing done were in it ſelf unlawful or not, ſe as it had but an appearance of evil; and from thence an *aptitude* to *draw* another to do that (by *imitation*) which ſhould be *really* & *intrinſecally evil*, the *wicked intention* alone, (whatſoever the effect ſhould be, or what means ſoever ſhould be uſed to promote it) ſufficeth to induce the guilt of *giving Scandal* upon the *doer*: This was *Jeroboam's* ſin, in ſetting up the *Calves* with a *formal purpoſe* and *intention* thereby (for his own *ſecular* and

and *Ambitious* ends) to *corrupt* the *purity* of *Religion*, and to draw the *People* to an *Idolatrous Worship*, for which cause he is so often *stigmatized* with it, as with a note of *Infamy*, to stick by him while the *World standeth*, being scarce ever mentioned but with this addition, *Jeroboam the Son of* Nebat *that made* Israel *to sin*. Here the Rule is, *Do nothing* (*good or evil*) *with an intention to give Scandal.*

4. The *third way* is, when a Man doth something before another, which in it self is not *evil*, but *indifferent*, and so according to the Rule of *Christian Liberty*, *lawful* for him to *do*, or not to *do*, as he shall see *cause* (yea, and perhaps otherwise *commodious* and *convenient* for him to *do*) yet whereat he probably *foreseeth* the other will *take Scandal*, and be occasioned thereby to do *evil*. In such Case, if the thing to be done, be not in some degree (at least prudentially) necessary for him to do; but that he might, without *great inconvenience* and *prejudice* to *himself*, and any *third Person*, leave it *undone*, he is bound in *Charity* and *Compassion* to his *Brethers Soul*, (for whom Christ died) and for the avoiding of *Scandal* to *abridge* himself in the *exercise* of his *Christian Liber-*

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ty for that time ſo far, as rather to ſuffer ſome *inconvenience* himſelf by the not *doing* of it, than by *doing* of it to cauſe his *Brother* to *offend*; the very Caſe which is ſo often, and ſo largely, and ſo earneſtly inſiſted upon by St. *Paul*, *Rom.* 14. 13, 21. and 15. 1. 3. 1 *Cor.* 8. 7, 13. and 9. 12, 22. and 10. 23, 33. Here the Rule is, *Do nothing that may be reaſonably forborn, whereat it is like Scandal will be taken.*

5. The *laſt way* is, when a Man doth ſomething before another, which is not only *lawful*, but (according to the exigencies of preſent circumſtances *pro hic & nunc*) very behoveful, and in ſome ſort (prudentially) *neceſſary* for him to do; but foreſeeth in the *beholder* a propenſion to make an *ill uſe* of it, and to take encouragement thereby to *commit ſin*; if there be not withal a great care had to *prevent*, as much as is poſſible, the *Scandal* that might be *taken* thereat: for, *Qui non prohibet peccare cum poteſt, jubet.* In ſuch caſe the bare *neglect* of his *Brother*, and not uſing his utmoſt endeavour to prevent the evil that might enſue, making him *guilty*, upon which Conſideration ſtandeth the *equity* of the *Judicial Law* given to the *Jews*, *Exod.* 21. 33, 34. which ordereth, that in caſe

case a Man dig a *Pit* or *Well* for the use of his Family, and (looking no farther than his own conveniency) put no *cover* on it, but leave it *open*, whereby it happeneth his Neighbours Beast do *fall* therein, and perish, the *owner* of the *Pit* is to make it good, inasmuch as he was the *occasioner* of that *loss* unto his Neighbour, which he might and ought to have *prevented:* In this last Case the thing is not (for the danger of the *Scandal*) to be *left undone*,) supposing it (as we now do) otherwise *behoveful* to be done; but the *action* is to be ordered, and carried on by us, for the manner of *doing*, and in all Respects and Circumstances thereunto belonging, with so much *clearness*, *tenderness*, and *moderation*, and *wisdom*, that so many as are willing to take notice of it may be satisfied that there was on our part a reason of just necessity that the thing should be done; and that such persons as would be willing to make use of our *example*, without the like necessity, may do it upon their own score, and not be able to *vouch* our *practice* for their *excuse*; even as the Jew that stood in need to sink a *Pit* for the service of his House and Grounds, was not (for fear his Neighbors Beasts should fall into it, and be drowned) bound

bound by the Law, to forbear the making of it, but only to provide a sufficient cover for it, when he had made it. Here the Rule is, *Order the doing of that which may not well be left undone, in such sort, that no Scandal may, through your default, be taken thereat.*

6. I do not readily remember any *doubt* that can occur about the reason of *Scandal*, which may not be brought within the compass of these *four Rules*; and then the right applying some or other of these *Rules*, will give some furtherance towards the *resolution* of these *doubts*.

The CASE of a BOND

Taken in the

KINGS Name,

Proposed *July* 1658.

R. C. *Was* seized in Fee *of certain* Houses *of small Value, with the* Appurtenances; *and in the Year* 1635. *whiles* Owner *of the said* Houses *he intreated* A. B. *to be his* Surety *for* one hundred pounds; *and continued the same at* Interest *till* 1639. *At which time he requested* A. B. *to* discharge *that* Bond, *and in* consideration *thereof* selleth *the said* Houses *to* A. B. *and his* Heirs *for ever*; *the said* R. C. *also* buyeth *of a* Merchant *a parcel of Goods*; *the* Merchant *being a* Receiver *of some part of the late* Kings Revenue, *and under pretence of a* priviledg *thereby, taketh a* Bond *of the said* R. C. *for the* payment *of* two hundred pounds *to himself, but in the* Name of the *late* King, *as if* indebted *to the* King; *and under that* pretence,

tence, *procureth an* Extent *upon the* Houſes *ſold to* A. B. *and make* Seizure *thereof: Was* R. C. *ſeized of the ſame, when he* entered *into that* Bond.

The ſaid King, 1640. *publiſhed a* Proclamation, *wherein he declared, That the* taking *of ſuch* Bonds *was contrary to* His Intention, *and an* abuſe *of his* Prerogative, *and* prohibited *all ſuch* crafty Courſes, *as tending to the* Oppreſſion *of his* Subjects; *and it is to be* noted, *that the ſaid* Proclamation *was Publiſhed* two years *before the* Extent *was executed upon the* Houſes, *which nevertheleſs have been held under that* Extent, *about* fourteen years, *which is beyond the* value *of the* Houſes.

The ſaid R. C. *died poor, the* Merchant *is dead alſo, without any* Child, *leaving an* Eſtate *behind him of* twenty thouſand pounds, *as is ſuppoſed; a great part* viſible *in* Lands, *as appeareth by his* laſt Will *upon* Record.

Advice of Counſel *at* Law *being taken, how the ſaid* A. B. *may be moſt* readily relieved; *he is directed to* Petition *the* preſent ſupreme Power *to* pardon *the* Debt, *becauſe taken only in the* Kings Name, *when there is no* Debt *due to him from* R. C.

As to the Case Proposed.

1. I Am clearly of opinion, that the taking of *Bonds* in the *Kings Name*, to the meer behoof, and for the advantage of *private persons*, when there was such *Debt* really due to the *King*, was a *fraudulent* and *unjust act* from the beginning; for though it were not *actually forbidden*, and so might perhaps be valid enough *in foro externo*, till the issuing out of the Kings *Proclamation* in that behalf; yet was it in point of *Conscience* unlawful before, as being a *crafty course*: so refused by the King himself, and guilty of a *double injustice*, the *one* to the *King*, as an *abuse* to his *Prerogative*; the *other* to the *Subject*, as tending to their *oppression*, as by the *Proclamation* is recited, and that therefore,

2. Neither might the *Merchant*, whiles he *lived*, nor ought his *Executors*, now he is *dead*, to make advantage of the *Kings Name* used in that *Bond*; nor might he then, nor may they now, by virtue of the *Kings Prerogative*, or under the colour thereof, for the recovery of the said *Debt*, use any way to the prejudice or damage of the *Obligee*, or of

of any *Purchaſer* from him, other than ſuch, as he or they might have uſed, in caſe the *Bond* had been taken in the *Obligee's* own Name, and not in the Kings.

3. If any *Proceedings* have been made already in purſuit of the *Debt*, due upon the ſaid *Bond*, upon no other ground or colour, than the *Prerogative* aforeſaid, whereby the ſaid *A. B.* cometh to be endamaged or prejudiced more than otherwiſe he ſhould have been; that the *Executors* ought to make him ſome conſiderable ſatisfaction for the ſame, although perhaps not to the full of what he hath ſuffered or would demand; yet in ſuch a proportion, as to the judgment of indifferent perſons (in a caſe wherein both parties, if they muſt do what is fitting and juſt, are ſure to be loſers) ſhall ſeem reaſonable, in caſe the *Parties* cannot accord it between themſelves.

4. Whereof, although through the *corrupt partiality* that is in moſt, I may truly ſay, all men more or leſs; I do not apprehend any great likelihood (for neither part *would*, and yet both muſt be *loſers*) yet I ſhould adviſe that tryal were made thereof in the firſt place, as the moſt kindly *Chriſtian way* of growing to *Peace*, if *Parties* will be

perſwaded to meet about it, and can be made *Maſters* of their own *paſſions* when they are met; and ſurely matters might be eaſily brought to a *handſome concluſion*, if both *parties*, but eſpecially the *Executors*, who ſeem to have the advantage in *Law*, would not ſtand too much upon whatſoever advantage they may ſeem to have, but (as in *Conſcience* they ought) ſubmit both that, and all other circumſtances appertaining to the *buſineſs*, and indeed their whole *mutual demands*; to the final determination of that *tranſcendent Law*, which *Chriſt* hath eſtabliſhed as the only *Royal Standard*, whereby to meaſure the *equity* of our *actions*, in all our dealings towards others, *viz. To do as we would be done unto*; or which cometh to one, *Not to do that to another, which if he ſhould do to us* (ſuppoſing his Caſe was ours) *we ſhould think our ſelves ſcarce juſtly and fairly dealt withal.*

5. But laſtly, in caſe no ſuch accord can be made, either by *agreement of Parties*, or *mediation of Friends*, and that through the only default and ſtiffneſs of the *Executors*; *A. B.* having by all fair ways faithfully ſought and endeavoured the ſame, I ſee not but the ſaid *A. B.* may (but not to be done, but

but as his laſt refuge) ſeek to relieve himſelf according to the advice of his *Counſel*, by making his *Addreſſes* to ſuch *Perſon* or *Perſonage*, as for the time being ſhall be in actual poſſeſſion of the *Supreme Power*, and ſo in a capacity to over-rule the *Law* in a Caſe of that nature, by forgiving that *Debt* whereunto the King was colourably and fraudulently entituled for private advantage, to the prejudice of a *third perſon*, but was not at all a debt owing to him from the *Obligee*.

P. P. 17. *July*, 1658.

The CASE of the ENGAGEMENT.

SIR,

I Have hitherto been very ſparing in delivering my opinion concerning the point now moſt in agitation, *viz. Of the lawfulneſs or unlawfulneſs of ſubſcribing the Engagement:* conſidering the miſchiefs that muſt needs have followed, if it ſhould be once noiſed abroad, that I had given forth any determination in ſo tickliſh a point. I could not but foreſee on the one ſide, if I ſhould condemn it as utterly unlawful, how I ſhould be looked upon by thoſe that have all power in their hands, not as a refuſer only, but a diſſwader alſo of what they have thought fit to require: and on the other ſide, if I ſhould allow it in any caſe lawful, what ill uſe would certainly be made thereof by multitudes of people, apt to be ſo far ſcandalized thereby, as either to ſwallow it whole without chewing, (that is, reſting themſelves upon the general determination of the lawfulneſs to take it hand over head, without

without due consideration, either of the true meaning of it, or of other requisite cautions and circumstances) or else to conceive themselves by so engaging, to be for ever discharged from the bond of their former *Allegiance.*

Yet since by your Letter, and by sending your servant therewith on purpose so many days journey, through unknown ways, and at this season of the year (especially as the weather hath proved since his coming forth) scarce passable, you have shewn your earnest desire to understand what my opinion is in this point; so great, both for difficulty and concernment; I could not think it fit, nor consistent with that Civility which is to be used, especially towards Strangers, to send back your messenger without the return of some kind of answer: Wherein, albeit I shall not come up to the full, of what your Letter declareth to be your desire, *viz. In giving a particular Judgment and estimate of the Eight several Arguments therein proposed, and the additional* Quære *in the Postscript:* yet you shall find something tending towards your satisfaction therein, by touching upon those points (so far as the straits of time would suffer) wherein the difficulty of the whole

whole business seemeth chiefly to consist.

First, then, it is to be considered, that *Allegiance* is a Duty that every subject, under what form of Government soever, by the Law of *Nature*, oweth to his Country, and consequently to the Sovereign Power thereof. For the very same Law (which we may call the *Law of Nature*, at least in a large acceptation) which inclineth particular Men to grow into one civil Body of a Common-wealth, must necessarily withal, imprint a sense, and a tacite acknowledgment of such a duty of *Allegiance* in every inferior member of the Body, unto the *Caput Communitatis*, or Sovereign Power, by which that Common-wealth is Governed, as is necessary for the preservation of the whole Body. So that the bond of *Allegiance* doth not arise originally from the *Oath* of *Allegiance*; as if those that had not taken the *Oath*, had a greater liberty to act contrary to the *Allegiance* specified in the *Oath*, than those that have taken it, have: or as if, in case the *Oath* should be quite laid aside, there should be no *Allegiance* due. But it is so intrinsecal, proper, and essential a duty, and (as it were) fundamental, to the relation of a Subject, *quâ talis*, as that the very name of

of a Subject doth, after a sort, import it; insomuch, that it hath thereupon gained, in common usage of speech, the stile of *Natural Allegiance*: Whence all these inferences will follow.

1. That the *Bond* of *Allegiance*, (whether sworn or not sworn) is in the nature of it *perpetual* and *indispensable*.

2. That it is so inseparable from the relation of a Subject, that although the exercise of it may be suspended by reason of a prevailing force, whilst the Subject is under such force, (*viz.* where it cannot be imagined, how the endeavour of exercising it can be effectually serviceable to restore the Sovereign Power to the right owner, for the establishment of that publick Justice and Peace wherein the happiness of Commonwealths consisteth) yet no outward force can so absolutely take it away, or remove it, but that still it remaineth virtually in the subject, and obligeth to an endeavour (so soon as the force that hindred it is over) of actually exercising of it, for the advantage of the Party, to whom of right it is due, and the advancement of the common good thereby, upon all fit occasions.

3. That no Subject of *England*, that either

either hath, by taking the Oaths of *Supremacy*, or *Allegiance*, acknowledged; or that not having taken either Oath, yet otherwise knoweth, or believeth, that the *Sovereign Power* in *England*, to whom his *Natural Allegiance* is due, is *the King, his Heirs, and lawful Successors*, can without sinning against his Conscience, enter into any *Covenant*, *Promise*, or *Engagement*, or do any other *Act*, *or Acts* whatsoever, whereby either to transfer his *Allegiance* to any other Party, to whom it is not of right due, or to put himself into an incapacity of performing the duties of his *bounden Allegiance* to his lawful Sovereign, when it may appear to be useful and serviceable to him.

4. That therefore the taking of the late *Solemn League and Covenant*, by any Subject of *England* (notwithstanding the Protestation in the Preface, that therein he *had the Honour of the King before his Eyes*; and that express clause in one of the *Articles* of it, wherein he swore, *The Preservation of the Kings Person and Honour*) was an Act as clear contrary to the *Oath of Allegiance*, and the *Natural Duty* of every Subject of *England*; as the *Assisting of the King to the utmost of ones Power* (which is a branch of the

Oaths)

Oaths) and the aſſiſting againſt any Perſon whatſoever, with his utmoſt Power, thoſe that were actually in Arms againſt the King (which was the very end for which that Covenant was ſet on foot) are contrary the one unto the other.

5. And that alſo for the ſame reaſon, no Subject of *England*, that hath taken the Oaths, and underſtandeth them, or is perſuaded that the Sovereignty of this Realm doth of right belong to the King, his Heirs, and lawful Succeſſors, can without ſinning in like manner againſt his Conſcience, take the *Engagement* now offered: if he ſo underſtand the words, wherein it is expreſſed, as if they did contain in them, and require of the Promiſer, an acknowledgment that the Supreme Power of this Realm, whereunto the Subjects owe their *bounden Allegiance*, is rightly veſted in thoſe Perſons that now exerciſe it; or as if they did import an utter Abjuration, or renouncing of that *Allegiance* which was formerly held due to the King.

II. This being cleared, the next enquiry muſt be, Whether or no *the words of the Engagement* will reaſonably bear ſuch a conſtruction, as to the underſtanding of a rational

tional and conſcientious man, may ſeem conſiſtent with his *bounden duty* and *Allegiance* to his lawful Sovereign? Whereof (I think) there need be no great queſtion made, if it be well conſidered,

1. That all expreſſions by words, are ſubject to ſuch ambiguities, that ſcarce any thing can be ſaid or expreſſed in any words, how cautelouſly ſoever choſen, which will not render the whole ſpeech capable of more conſtructions than one.

2. That very many Men, known to be well-affected to the King and his Party, and reputed otherways both learned and conſcientious (not to mention the *Presbyterians*, moſt of whom, truly for my own part, when we ſpeak of learning and conſcience, I hold to be very little conſiderable) have ſubſcribed the Engagement; who in the judgment of Charity, we are to preſume, would not ſo have done, if they had not been perſuaded the words might be underſtood in ſome ſuch qualified ſenſe, as might ſtand with the duty of *Allegiance* to the King.

3. That (as you write) it is ſtrongly reported and believed, that the King hath given way to the taking of the Engagement,

ment, rather than that his good Subjects ſhould loſe their Eſtates for refuſing the ſame. Which, as it is a clear evidence, that the King, and they who are about him, to adviſe him, do not ſo conceive of the words of this Engagement, as if they did neceſſarily import an abandoning of the *Allegiance* due to him: ſo 'tis (if true) a matter of great conſideration towards the ſatisfaction of ſo many, as out of that fear only, have ſcrupled the taking of it. For the doing of that cannot be reaſonably thought to deſtroy the Subjects *Allegiance* which the King, who expecteth *Allegiance* from all his Subjects, adviſedly, and upon mature deliberation alloweth them to do.

III. But all this being grantrd, that the words of the Engagement are capable of ſuch conſtruction; yet is not the conſcience thereby ſufficiently ſecured, from juſtly ſcrupling at the taking thereof, unleſs it may yet further appear, that the Subject hath the liberty to make uſe of ſuch a conſtruction; which is in effect the *Quære* contained in your Poſtſcript, *viz.* Whether upon ſuppoſition, that the words of the Engagement

gagement will bear more constructions than one, the subscriber may take it in his own sense, or is bound to take it in the imposers sense? or, Whether it be necessary or expedient before he subscribe, to ask those that require his subscription, in what sense they require him to subscribe it? Upon the resolution of which *Quære*, since (as I conceive) the last resolution of the Judgment, wherein the Conscience is to acquiesce, doth principally depend; I shall endeavour to give you my thoughts therein, (wherein I acknowledge to have received much light and satisfaction from a discourse written by a Learned, Judicious, and Pious Friend, whereof I lately had the perusal, but for some reasons, not thought fit to be published) as distinctly, and clearly, as the time I have to do it in, will suffer.

1. *First*, then, for a Man that is required of another to give Faith by some *Oath*, *Promise*, or other *Engagement*, to take it in a sense of his own, manifestly different (even in his own apprehension) from the others meaning, sufficiently expressed by words, according to the common custom of speech, and the nature of the business which it concerneth, is so gross a conceit, that

that had not the Impudence of the Jesuits, in maintaining the lawfulness of their Equivocations, and the sad experience of these late times, (wherein thousands have cheated themselves into Perjury, by thinking to avoid it) evidenced the contrary, it might well have been thought a thing incredible, that any Man of Common understanding, should suffer his Reason to be so infatuated by his Affections, as to be deceived thereby. For if such latitude of construction should be admitted in Promises, and other Obligations of that nature, intended for the Preservation of Faith amongst Mankind, there would not remain any possible means, whereby for Men to have assurance of one anothers meanings. Wherefore I take that for a clear truth, that all Promises, and Assurances, wherein Faith is required to be given to another, ought to be understood, *ad mentem imponentis*, according to the mind and meaning of him to whom the Faith is to be given; so far forth as the meaning may reasonably appear, by the nature of the matter about which it is conversant, and such signification of the words, whereby it is expressed, as according to the ordinary

ordinary use of Speech amongst Men, agreeth best thereunto. The reason whereof is, because the Faith so required to be given, is intended to the behoof, and for the interest of him that requireth it; namely, to the end he may have the better assurance from him that giveth the Faith, that what is promised shall be accordingly performed: which assurance he cannot have, if after his meaning, sufficiently declared by the words, it should yet be at the liberty of the Promiser to reserve another secret meaning in his own Breast, differing therefrom.

2. But *Secondly*, what if the intention of the Imposer be not so fully declared by the words and the nature of the business; but that the same words may in fair construction be still capable of a double meaning, so as taken in one sense, they shall bind to *More*, and in another to *Less*. I conceive in such case it is not necessary, nor always expedient, (but rather for the most part otherwise) for the Promiser, before he give Faith, to demand of the Imposer, whether of the two is his meaning. But he may by the rule of Prudence, and that (for ought I see) without the violation of

of any Law of Conſcience, make his juſt advantage of that ambiguity, and take it in the ſame ſenſe which ſhall bind *to the Leſs.* And this I ground upon the very ſame reaſon as before; for ſith the Faith to be given, is intended to the behoof of him, to whom it is given, it concerneth him to take care that his meaning be expreſſed in ſuch words as will ſufficiently manifeſt the ſame to the underſtanding of a reaſonable Man. Which if he neglect to do, no Law of Equity or Prudence bindeth the Promiſer by an over-ſcrupulous diligence to make it out, whereby to lay a greater obligation upon himſelf than he need to do.

3. But then *Thirdly*, if it ſhall happen (as often it cometh to paſs, when we have to deal with cunning men, and may poſſibly be the Caſe now, and undoubtedly was ſo in the buſineſs of the *Proteſtation*, when the time was) That he that requireth the Faith to be given, do of purpoſe ſo contrive words, that there may be left an ambiguity and latitude of ſenſe therein; yea, and that it be very probable, and in a manner apparent, (upon the conſideration of the point of intereſt, or other ſtrong

presumptuous arising from circumstances or otherwise) even to the apprehension of the Promiser himself, that he hath some further reach in requiring that promise from him, some more remote and secret intention than he is willing to discover. In that case what is to be done? I answer, That the Promiser in such case is no ways obliged in giving his Faith, to take notice of any such secret intention, but is at liberty to make use of that Latitude of sense, which the other did rather chuse to leave undetermined, than to restrain, and so to turn the others cunning dealing to his own best advantage, by taking it in the more favourable construction; and that which bindeth *to less*. For it is *the declared intention only*, (*viz.* That which the words, according to the common use of Speech, do in relation to the nature of the Subject, most naturally and properly represent to the understanding of reasonable Men; when they hear them) and not to the remote, secret, and *reserved intent*, which the Promiser is obliged unto. The reason whereof is manifest; because he that requireth Faith to be given from another, by words of his own

own contriving, is ever preſumed ſo to have determined the ſenſe thereof, in the contrivance of the words, as may ſufficiently declare what he intendeth the Promiſer ſhould aſſure him to perform. If therefore he have not ſo determined the words, as to ſignifie *the More*; it is in all reaſon to be preſumed, that he intended to oblige him but to *the Leſs*. For being at liberty to make his own choice of words, whereby to expreſs his own meaning; who can think otherwiſe, but that he would make the choice with reſpect to his own Intereſt? And therefore, though he might have a ſecret deſire, which he is loth to diſcover, that the Promiſer ſhould be bound to *the More*, and would be marvellouſly well-pleaſed, that he ſhould ſo underſtand the words, as if they intended to bind him to *the More*: Yet ſince it had been ſo eaſie a matter for him, by adding or altering a few words, to have declared that intent, if he had thought it conducible to his own ends; it will be preſumed alſo, that it was out of reſpect of ſelf-intereſt, that he forbare ſo to do, and choſe rather to leave his meaning, in ſuch general words, as will not exclude

the ſenſe, which bindeth but to *the Leſt*; and conſequently that his declared intent obligeth to no more but to *the Leſt only.*

IV. To bring the matter yet cloſer, and to put it up to the preſent Caſes, there are yet two things more to be done.

Firſt, To ſhew what different conſtructions (*the higheſt*, I mean, and *the loweſt*) the words of the Engagement are fairly capable of.

And *Secondly*, to find as well as we can, whether of the two is more probably the meaning intended by the Impoſers, to be declared by the words.

The words are theſe:

I do promiſe to be true and faithful to the Common wealth of England, *as it is now eſtabliſhed without King or Lords.*

Wherein there are ſundry Ambiguities.

1. *Firſt*, In the words *true and faithful*; by which may be intended, either the promiſe of that *Fidelity* and *Allegiance* (which was formerly acknowledged to be due to the

the King, *&c.*) to be now performed to those that are presently possessed of the Supreme Power, as their right and due. Or else that promise *of such a kind of Fidelity*, as Captives taken in the War, promise to their Enemies, when they fall under their Power; *viz.* to remain true Prisoners of War, and so long as they are in their power, not to attempt any thing to their destruction.

2. *Secondly*, In the word *Common-wealth*, by which may either be meant, those persons who are the *prevalent Party* in this Kingdom, and now are possessed of, and do exercise the Supreme Power therein, as if the right of Sovereignty were vested in them: Or else, the *whole entire Body of the English Nation*, as it is a Civil Society or State within in self, distinguished from all other Foreign Estates. Taken in the former sense, the Fidelity promised to the *Common-wealth*, relateth directly to the upholding of that party who are the present Governors *de facto*, and imports subjection to them as *de jure*: But taken in the latter, it relateth the safety of the Nation, and importeth no more as to the

preſent Governors, but to live peaceably under them *de facto*, and to yield Obedience to them in things abſolute neceſſary for the upholding Civil Society within the Realm; ſuch as are the defence of the Nation againſt Foreiners, the furtherance of Publick Juſtice, and the maintainance of Trade.

3. In the words *as it is now eſtabliſhed*, &c. which may be underſtood either by way of approbation of what hath been done by way of aboliſhing Kingly Government, and the Houſe of Peers, and placing all Authority and Power within this Realm, in the Houſe of Commons. Or elſe ἐξηγητικῶς only, as a clauſe ſimply and barely reciting what manner of Government it is that this Nation *de facto*, is now under; *viz.* a Government by the Commons only, without either King or Houſe of Lords.

"Which Ambiguities conſidered, The "*higheſt conſtruction* that can be reaſonably "made of the words, is to this effect. I "acknowledge the Sovereign Power of this Nation, whereunto I owe Allegi- "ance and Subjection to be rightly ſtated "in the Houſe of Commons, wherein neither

" neither King nor Lords (as such!) have,
" or henceforth ought to have any share;
" And I promise that I will perform
" all Allegiance and Subjection thereun-
" to, and maintain the same with my
" fortunes and life to the utmost of my
" Power.

And the *lowest construction* that can be reasonably made of the same words, is to this effect: " Whereas for the present, the Su-
" preme power in *England*, under which
" Power I now am, is actually possessed and
" exercised by the House of Commons,
" without either King or Lords; I promise
" that so long as I live under that Power
" and Protection, I will not contrive or at-
" tempt any act of hostility against them:
" but living quietly and peaceably under
" them, will endeavour my self faithfully
" in my place and calling, to do what e-
" very good Member of a Common-wealth
" ought to do for the safety of my Coun-
" try, and preservation of Civil Society
" therein.

V. Now cometh in to be considered in the last place the great Question, whether of the two constructions it is, (*That* which bindeth to the *Most*, or *This* which obligeth

to

to the *Least*, the words can well bear) that the formers of the Engagement did rather intend to declare by these words. They that think *the former*, want not probability of reason to ground their perswasions upon. For they consider, that those who are presently possessed of the Supreme Power, are not minded to part with it if they can hold it. And that the likeliest way to hold it is, if they can possibly bring the whole People of *England*, or at least the far greatest part thereof, to acknowledge that they are rightly possessed of it, and to promise Subjection and Allegiance to them as such. And that therefore the Engagement, being purposely devised and set on foot, as the fittest Engine to expedite that work, must in all reason intend to oblige so far. Which being so contrary to their Judgment and perswasion, concerning the Duty and Oath of Allegiance, I cannot blame those that so understand the words of the Engagement, if they abominate the very thought of taking it.

But there wanteth not greater probability of Reason on the other side, to induce us to believe that the latter and lower sense

is

is rather to be deemed the immediate, and declared intent of the Imposers, whatsoever cause of suspicion there may be, that the former meaning may be more agreeable to their *secret, reserved, and ultimate intent*; between which two, if there be any difference (as it is not impossible but there may be) the Engager is not concerned in it, or not yet: the Equivocation, if there be any in that, must be put upon the Imposers, not on the Promisers score. For thus believing there are amongst others these Probabilities.

1. That many prudent and conscientious men of the Royal Party, as well Divines and Lawyers, as others, have thus understood it, who we presume would not for any outward respect in the World have taken it, if they conceived any more to have been intended in it.

2. That it hath often been affirmed, both publickly and privately in several parts of the Kingdom (if we may believe either common Fame, or the reports of sundry credible particular persons) by those that have perswaded or prest others to subscribe; that the same is the very true intent and meaning of it, and no other.

3. That

3. That if the Imposers had been minded to have declared an intent of binding *to More* they might easily have framed the words so as not to be capable of a construction binding *to Less.*

4. That (as is also credibly reported) whilst the form of the words was under debate, the opinion of those that would have had it set higher, was not followed, as held unseasonable; and the Vote carried, for the more moderate expression wherein it now standeth.

5. That the Imposers, intending by the Engagement to secure themselves, especially against the designs and attempts of those men, who they knew (well enough) held them for no other than Usurpers, must be in reason supposed to require no more assurance of them by the Engagement, than such as may and is usually given to Usurpers; which is, not an acknowledgment of their title, and a promise of Allegiance, but meerly a Promise of living quietly, so long as they are under their power, and enjoy their protection.

6. That it is a received Maxim of Political prudence, for all new Governors, (especially

(eſpecially thoſe that either introduce a new form of Government, or come in upon a queſtionable title) to abſtain from all harſh proceedings, even againſt thoſe whom they know to be evil affected to their power, and not ſo much as to exaſperate them (though it be in the power of their hands to deſtroy them) eſpecially in the beginning of their Government; but rather to ſweeten them into a better Opinion of their perſons, and to win upon them by Acts of Grace and Oblivion (for *Remiſſiùs imperanti meliùs paretur.*) So as they may have but any tolerable kind of aſſurance from them in the mean time, of living quietly and peaceably under them. *Sence. 1. de Clem. 24.*

We have no reaſon therefore to believe that the Impoſers of this Engagement, who have acted the parts of the greateſt Politicians, ſo perfectly and ſucceſsfully hitherto, as to poſſeſs themſelves ſo fully of the Supreme Power of ſo great and flouriſhing a Kingdom, in ſo few years, would be ſo impolitick as not to proceed by the ſame Rules, that all wiſe and ſucceſsful peſons have ever practiſed in the managing, and for the eſtabliſhing of an acquired power.

VI.

VI. Out of all theſe Premiſes together (weighing my poſitive concluſion, either Affirmative or Negative, touching the Lawfulneſs or Unlawfulneſs of the ſubſcribing *in univerſali*) I ſhall declare my Opinion only in theſe few following particulars.

1. That it is not lawful for any Man to take the Engagement with a reſolution to break it.

2. That therefore, whoſoever thinketh the words of the Engagement do contain a promiſe of any thing which is not lawful for him to perform, cannot take it with a good conſcience.

3. That whoſoever ſo underſtandeth the words of the Engagement, as if they did oblige him to any thing contrary to his Allegiance, or render him unable to act according thereunto, upon any ſeaſonable emerging occaſion, cannot with a good conſcience take it.

4. That if any Man for any temporal benefit, or avoiding any temporal damage, ſhall take the Engagement with a doubting conſcience (that is, before he be perſwaded in his Judgment, upon ſome probable ground of reaſon, that it is

is lawful for him ſo to do) he ſinneth therein.

5. That if any Man after a ſerious deſire of informing himſelf as rightly as he can, what are the duties of his *Allegiance* on the one ſide, and what is moſt probably the meaning intended by the words of the Engagement on the other ſide, ſhall find himſelf well ſatisfied in this perſwaſion, that the performance in the mean time of what is required by the Engagement ſo underſtood, is no way contrary (for any thing he can diſcern for the preſent) to his bounden *Allegiance*, ſo long as he is under ſuch a force, as that he cannot exerciſe it; and likewiſe, that whenſoever that force is ſo removed from him, or he from under it, as that he hath power to act according to his *Allegiance*, the Obligation of the Engagement of it ſelf determineth and expireth: and out of theſe conſiderations, rather than ſuffer extreme prejudice in his Perſon, Eſtate, or neceſſary Relations, ſhall ſubſcribe the Engagement; ſince his own heart condemneth him not, neither will I.

Sir, I have now two requeſts to you, which I doubt not but you will think reaſonable.

ſonable. The one, that whatſoever uſe you ſhall pleaſe to make of theſe papers, or any thing therein contained, for your own, or any friends ſatisfaction; yet you would not deliver any Copies abroad, leſt they ſhould come to be Printed, as ſome other papers of mine, written in this manner, hove been without my knowledg. This I deſire, both in reſpect of the danger I might incur from the diſpleaſure of the Potent Party, if any ſuch thing ſhould come abroad; as alſo leſt upon the conſideration of ſome things here hinted, they might think the words of the Engagement too light, and might thence take occaſion to lay ſome heavier Obligation upon us, in words that ſhould oblige *to More.* The other requeſt is, that ſince I have not any other perfect Copy of what now I ſend you, you would procure it to be tranſcribed for me; and either the Copy ſo tranſcribed, or theſe very Papers rather, when you have tranſcribed them, tranſmit incloſed in a Letter, or by ſome Friend that will be ſure to deliver them ſafe, with his own hands, to my Son——in *London*, to whom I ſhall write ſhortly, that he may expect them.

Sir,

Sir, I desire that my best respects may be presented, *&c.*—God endue us all with Grace and Wisdom fit for these evil times; to whose Mercy and Blessing commend us all, I rest,

Your Loving Friend and Servant.

B. P. Dec. 20. 1650.

I THE

The CASE of a RASH VOW Deliberately Iterated.

The Case.

A *Gentleman of good Estate, hath Issue one only Daughter, who placing her affections upon a person much below her rank, intendeth Marriage with him: the Father hearing of it, in great displeasure Voweth, and confirms it with an Oath, that if she Marry him, he will never give her a farthing of Estate. The Daughter not withstanding Marryeth him: After which the Father sundry times iterateth and reneweth his said former Vow, and that in a serious and deliberate manner; adding further, That he would never give her or any of hers any part of his Estate*

QUÆRE:

Whether the Fathers Vow so made, and so confirmed and iterated as aboveſaid, be Obligatory or not?

The Resolution.

My opinion is, *That the Vow was* Rash *and is not at all* Obligatory.

1. The

1. The Question here proposed is concerning the obligation only; yet I deem it expedient to declare my opinion concerning the Rashness also: and that for two reasons. *First*, Because there seemeth in the proposal of the Case, to be some weight laid upon the after-iterations, which were more deliberate, as if they added to the Obligation. And *Secondly*, Because I think it needful that the Vower should as well be convinced of the greatness of his sin in making such a Vow, for the time past, as satisfied concerning the present and future invalidity of it.

2. It is easie to believe, that the Gentleman, when he first made the Vow, was possessed with a very great indignation against his Daughter for her high and inexcusable disobedience to him in so very weighty a business. And truly it must be confessed he had need to be a man of a very rare command over his own Spirit, and such as are scarce to be found one of a thousand, that could contain himself within the bounds of reason, upon so just a provocation from an only Child, (possibly some other aggravating circumstances concurring) as not to be transported with the violence of that

Paſſion, into ſome thoughts and reſolutions, not exactly agreeable with the dictates of right reaſon. It can therefore be little doubted, but the Vow made whilſt the Reaſon was held under the force of ſo ſtrange a perturbation, was a Raſh and irrational Vow.

3. Nor will theſe after-acts in confirmation of the firſt Vow, though having more of deliberation in them, be ſufficient to redeem either it or themſelves from the imputation of Raſhneſs: underſtanding raſhneſs in that latitude as the Caſuiſts do, when they treat *de Voto temerario*, under the notion whereof they comprehend all ſuch Vows as happen *per defectum plenæ & iſcuſſæ deliberationis*, as they expreſs it; For it is to be conſidered, that when an injury, diſobedience, or other affront is ſtrongly reſented, it many times maketh a very deep impreſſion in the Soul, which though after the firſt *impetus* have a little ſpent it ſelf, it begin ſomewhat to abate, yet it doth ſo by ſuch ſlow and inſenſible degrees, that the ſame perturbation, which firſt diſcompoſed the mind, may have a ſtrong influence into all ſucceeding deliberations for a long time after. Even as after an acute

Fever

Fever, when the ſharpeſt paroxyſms are over, and the malignity of the diſeaſe well ſpent, although the party begin to recover ſome degrees of ſtrength; yet there may remain for a good while after ſuch a debility in the parts, as that they connot exerciſe their proper functions, but with ſome weakneſs more or leſs, till the party be perfectly recovered. Sith therefore the after-iterations on the firſt Vow in the preſent caſe, did proceed apparently from the rancor and malignity remaining in the mind, as the dregs and reliques of the ſame perturbation, from which the firſt Vow alſo proceeded: the muſt upon the ſame account (to wit, *per defectum plenæ deliberationis*) undergo the ſame cenſure of Raſhneſs with the firſt. The ſame I ſay for the kind; ſome *difference* I grant there is for the degree: but *Majus & Minus non variant ſpeciem*, we know. And the conſideration of that difference is only thus far uſeful in the preſent Caſe, that the more deliberate thoſe after-acts were, the more culpable they are, and the leſs capable either of Excuſe or Extenuation; and conſequently do oblige the party to ſo much the more ſerious, ſolemn, and laſting Repentance.

4. But concerning rash Vows (in as much as the knot of the Question lyeth not there) it shall suffice to note these few points. *First*, That every *Rash Vow* is a sin; and that upon its own score, and precisely as it is *Rash*, although it should not be any other way peccant. All acts of Religious worship (by the importance of the third Commandment) are to be preformed with all due sobriety, and attention, and advisedness: how much more then a *Vow*? which is one of the highest acts of worship, as being a sacred contract, where unto God himself is a party, See *Eccl.* 5. 1. *&c.* *Secondly*, That Rash Vows are for the most part, (besides the Rashness) peccant in their matter also; For they are commonly made in passion, and all passions are evil Counsellors, and Anger as bad as the first. *The wrath of Man seldom worketh the righteousness of God.* *Thirdly*, That a Rash Vow, (though to be repented of for the Rashness) may yet in some cases bind. As for example, A man finding himself ill used by a Shop-keeper, of whom he had formerly been accustomed to buy, voweth in a Rage that he will never buy of him again: This is a Rash Vow, yet it bindeth, because if the

the party had never made any ſuch Vow at all, it had neither been unjuſt or uncharitable, (nor ſo much as imprudent) in him for to have done the ſame thing, which by his Vow he hath now bound himſelf to do. So if a man impatient of his ill luck at Cards, ſhould Vow in a heat never to Play at Cards any more; he were in this caſe alſo bound to keep his Vow: becauſe there neither is any ſin in keeping it, nor can be any great neceſſity why he ſhould break it. That therefore *Fourthly*, if at any time a *Raſh Vow* bind not; the invalidity thereof proceedeth not meerly (nor indeed at all) from the Raſhneſs (which yet is a very common error amongſt men) but from the faultineſs of it otherwiſe, in reſpect of the matter, or thing vowed to be done; when that which is ſo Vowed, is either ſo evil in it ſelf, or by reaſon of circumſtances, becometh ſo evil, that it cannot be performed without ſin.

5. That therefore concerning the Vow in the preſent caſe, I declared my Opinion that it is not at all obligatory; it is done upon this ground (which is a moſt certain truth, and conſented to by all) that *Rei illicitæ nulla obligatio.* If a man ſhall Vow

any thing that is contrary to *Piety*; as if having taken offence at some indiscreet passage in a Sermon of his own Minister, he should vow that he would never come to Church, or hear him Preach again: Or that is contrary to *Justice*, as to take away the life of an innocent person, as those forty persons that had vowed they *would neither eat nor drink till they had slain* Paul: Or never to make restitution to own whom he knew he had wronged: Or contrary to *Charity*; as to be revenged of, or never to be friends with one that had done him wrong: Or that is contrary to *Mercy*; as if having lost some mony by lending to his friend, or having smarted by suretiship, he should vow never to lend any man mony, or become surety for any man again. Let such a Vow, I say, as any of these, or any of the like nature, be made either rashly, or deliberately, and strengthened with Oaths and Imprecations, in the most direful and solemn manner that can be devised to tie it on the faster; yet it is altogether null and invalid as to the effect of Obligation. Whence those common sayings, *en malè promissis rescinde fidem; ne sit juramentum vinculum iniquitatis*, &c. And we

we have a good president for it in *David*, after he had in a rage vowed the destruction of *Nabal*, and all that belonged to him; which now, upon better consideration, he not only did not perform, but he blessed God also, for so providentially preventing the performance of it, by the discreet demeanor and intervention of *Abigal*.

6. Now the reason why such vows are not binding, is very cogent and clear; Even because the party at such time as he is supposed to have made such Vow as aforesaid, lay under another (a former, and therefore a stronger) obligation to the contrary. And it is agreeable to all the reason in the World, that he who either by his own voluntary act, hath bound himself (where lawfully he might so do) or by the command of his lawful Superior (that hath a right to his service, and may exact obedience from him) is already bound to do, or not to do this or that; should not have power to disoblige himself therefrom, at his own pleasure, or to superinduce upon himself a new Obligation contrary thereunto: *Obligatio prior præjudicat posteriori.* As in the case of *Marriage*, a precontract with

with one party, voideth after-contracts with any other: And if a man convey Lands to several persons, by Deeds of several dates, the first conveyance standeth good, and all the rest are void; and so in all cases of like nature. The Obligatory power thereof that is in *Vows*, *Oaths*, *Promises*, &c. is rightly said by some, to be a *constructive*, not a *destructive* power. The meaning is, that such acts may create a new Obligation where was none before, or confirm an old one, but it cannot destroy an old one, or substitute another contrary thereunto, in the place thereof.

7. And the reason of this reason also is yet farther evident; for that *Quisquis obligatur alteri obligatur.* When a man is obliged by any act, it is also supposed that the obligation is made to some other party; to whom also it is supposed some right to accrue, by vertue of the said act obligatory; and that that other party is by the said act sufficiently vested in that said right, of which right he cannot be again devested and deprived by the meer act of him who instated him therein, and is obliged to perform it to him (unless himself give consent

ſent thereunto) without the greateſt injuſtice in the World. Now God having a perfect right to our obedience, by his own obliging Precept, both for the not doing hurt to any man, and for the doing good to every man upon all fit opportunities: and this right alſo confirmed, and ratified by our own obligatory act in a ſolemn manner, before many witneſſes at our Baptiſm, when we vowed to keep all God's Commandments: it were unreaſonable to think that it ſhould be in our power, by any after-act of ours to diſoblige our ſelves from both, or either of thoſe obligations. For then we might by the ſame reaſon free our ſelves from the obligation of that latter act alſo (ſuppoſe an Oath, or Vow) by another ſubſequent Oath, or Vow; and from that again by another: and ſo play faſt and looſe, make Vows, and break them *in infinitum*. Evident it is therefore, that every vow requiring any thing to be done, which is repugnant to any office of *Piety*, *Juſtice*, or *Mercy*, which we owe either to God or man, is void, and bindeth not, becauſe it findeth us under the power of a former contrary obligation, and hath not it ſelf power ſufficient

sufficient to free or discharge us from the same.

8. The general Rule thus cleared, it remaineth to examine concerning the particular Vow now in question, whether it be void upon this account or no? It will be found hard I believe to free this *Vow* from being repugnant to the rules of *Justice*, but impossible, I am sure, to reconcile it with the perfect Evangelical Law of *Charity* and *Mercy*. First, *Civil* and *Political Justice*, requireth that every man should obey the wholsome Laws of his Country, and submit himself to be ordered thereby. Now, put the case (which is possible enough) that the Daughters Husband should for lack of support from his Father-in-law, or otherwise, live and die in great want, leaving his Wife and many small Children behind him, destitute of all means for their necessary sustenance. The Law would (as I suppose) in that case, upon complaint of the Parish, and for their ease, send the Daughter and her Children to the Father, and compel him to maintain them out of his Estate. Which order he ought to obey, nor can refuse so to do, without the high contempt of publick Authority, and

and manifeſt violation of the Civil Juſtice, notwithſtanding his Vow to the contrary: The Law muſt be obeyed whatſoever becometh of the Vow; in that caſe therefore it is evident the Vow bindeth not.

9. But ſay that ſhould not happen to be the caſe (which yet is more than any man can poſitively ſay before-hand) the Parent is nevertheleſs in *Moral Juſtice* bound to provide due maintenance for his Children and Grand-Children if he be able. Saint *Paul* ſaith that Fathers ought to lay up for the Children. True it is, he ſpeaketh it but upon the by, and by way of illuſtration, in the handling of another argument, very diſtant form this buſineſs: but that doth not at all leſſen the importance of it, ſuch illuſtrations being ever taken *à notiori*, and from ſuch common notions as are granted, and conſented unto by all reaſonable men. The ſame Apoſtle having amongſt other ſins of the Gentiles, mentioned diſobedience to Parents in one verſe, in the very next verſe, mentioneth alſo want of natural affection in Parents. And the diſobedience in the Child can no more diſcharge the Parent from the obligation of that duty he oweth

to

to the Child, and of affection and maintenance, then the unnaturalness of the Parent, can the Child from the duty he oweth to the Parent, of *Honour* and *Obedience*. For the several duties, that by Gods ordinance, are to be performed by persons that stand in mutual relation either to other, are not *pactional* and *conditional*; as are the Leagues and Agreements made between Princes (where the breach no one part dissolveth the obligation no the other) but are *absolute* and *independent*; wherein each person is to look to himself, and the performance of the duty that lyeth upon him, though the other party should fail in the performance of his.

10. Something I foresee may be objected in this point, concerning the lawfulness of the Parents withdrawing maintenance from the Child (either in whole, or at least in part) in the case of disobedience. Which how far forth it may, or may not be done; as it would be too long to examine, so it would be of little avail to the present business. For it is one thing to with-hold maintenance, from a disobedient Child for the present, and to resolve so to continue till he shall see cause to the contrary. And another thing to bind himself by Vow or Oath never

never to allow him any for the future, whatſoever ſhould happen. Let be granted whatſoever can be ſuppoſed pleadable on the Fathers behalf in the preſent caſe; yet there will ſtill remain two particulars in this Vow, not eaſily to be cleared from being unjuſt. *Firſt*, let the Daughters diſobedience deſerve all this uttermoſt of puniſhment from the offended Father; yet how can it be juſt, that for the Mothers fault, the poor innocent (perhaps yet unborn) Children, ſhould be utterly, and irrecoverably excluded from all poſſibility of relief from their Grand-Father? *Secondly*, It is (if not unjuſt, yet what differeth very little there-from) the extremity of rigid Juſtice; that any offender (much leſs a Son or Daughter) ſhould for any offence, not deſerving Death, be by a kind of fatal peremptory decree, put into an incapacity, of receiving relief from ſuch perſons, as otherwiſe ought to have relieved the ſaid offender, without any reſervation either of the caſe of *extreme neceſſity*, or of the caſe of *ſerious repentance*.

11. However it be for the point of *Juſtice*: yet ſo apparent is the repugnancy of the *matter* of this *Vow*, with the Precepts of *Chriſtian*

Christian Charity and *Mercy*; that if all I have hitherto said were of no force, this repugnancy alone were enough (without other evidence) to prove the unlawfulness, and consequently the invalidity, or inobligality thereof. It is (not an Evangelical Counsel, but) the express peremptory precept of Christ, that we should be *merciful*, even as our heavenly Father is *merciful*. And inasmuch as, not in that passage only, but for the most part whersoever else the duty of *mercy* is pressed upon us in the Gospel from the example of God: God is represented to us by the Name, and under the notion of a *Father*, although I may not lay much weight upon it, as a demonstrative proof; yet I conceive I may commend it as a rational Topick, for all that are Fathers to consider of, whether it do not import, that *mercy* is to be expected from a *father* as much as (if not rather much more than) from any other man; and that the want of *mercy* in a *Father*, is more unkindly, more unseemly, more unnatural than in another man: But this by the way from the Precept of Christ, we learn, that as there is in God a two-fold *mercy*, (a giving *mercy*, in doing us good, though we deserve

deserve it not, and a forgiving *mercy*, in pardoning us when we have done amiss:) so there ought to be in every good *Christian man* a readiness (after the example of God) to shew forth the fruits of *mercy* to others, in both kinds, upon all proper and meet occasions. So that if any person, of what quality or condition soever, shall upon any provocation whatsoever Vow that he will never do any thing for such or such a man; or that he will never forgive such or such a man: every such Vow, being *contra bonos mores*, and *contra officium hominis Christiani*, is unlawful, and bindeth not.

12. The offices of *mercy* in the former of those two branches, *viz.* of doing good, and affording relief to those that are in necessity, are themselves of so great *necessity* (as the case may be) that common humanity would exact the performance of them from the hand, not of a stranger only, but even of an enemy. If a stranger or an enemies Beast lie weltring in a Ditch, a helping hand must be lent to draw it out. The *Samaritans* compassion to the wounded Traveller in the Parable, *Luke* 10. (There being a feud, and that grounded upon Religion

gion, which commonly of all others, is the most deadly feud between the two Nations) is commended to our example, to the great reproach of the Priest and Levite, for their want of *Bowels* to their poor *Brother* of the same *Nation* and *Religion* with themselves: For the nearer the Relation is between the Parties, the stronger is the obligation of shewing *mercy* either to other. And there is scarce any relation nearer, and more obliging, than that of Parents and Children.

Our Saviour, who in *Matth.* 15. sharply reproved such Vows, (though made with an intention to advance the Service of God, by inriching his Treasury) as hindred Children from relieving there Parents, will not certainly approve of such vows (made without any other intention than to gratifie rage, and impatience) as hinder Parents from relieving their Children.

13. If to avoid the force of this argument, it shall be alledged, that the Daughters disobedience, in a business of so high concernment, might justly deserve to be thus severely punished, and that it were but equal that she, who had so little regard

regard to her Father' when the time was, should be as little regarded by him afterwards. All this granted, cometh not yet up to the point of shewing *Mercy* according to the example of God. No Childs disobedience can be so great to an earthly Parent, as ours is to our heavenly Father, Yet doth he not withstanding all our ill deservings continually do us good, communicating to our necessities, and causing his Sun to shine, and his Rain to fall, and infinite benefits in all kinds to descend upon mankind, not excluding the most thankless, and disobedient, and rebellious, from having a share therein.

14. And as for that other branch of *mercy* in *pardoning Offences*, God giveth a rich example to all men, of their duty in that kind, (and to Fathers particulary) by his great readiness to pardon the greatest offenders, if they sincerely seek to him for it. If the Father in the Parable, *Luke* 15. had proceeded with such severity against his riotous Son, as to have vowed never to have received him again; he had been a very improper exemplar, whereby to shadow out the mercy of God to repentant Sinners. Concerning the great importance of this

duty, which is so frequently inculcated by Christ and his Apostles, and so peremptorily enjoyned, as not any other duty more. See *Matt.* 6. 4. 15. *Matt.* 18. 21.---35. *Eph.* 4. 32. *Col.* 3. 13. *James* 2. 13. See also *Sirac.* 28, 1, *&c.*] I shall not need to say much; only as to the present *Case*, it would be considered, how perverse a course it is, and contradictory to it self, for a man to think himself obliged by one inconsiderate act, never to forgive his Daughter; when as yet he cannot beg pardon of his own sins, at the hands of God, (as he ought in his daily Prayer to do) without an expres condition of forgiving every body, and an implicit imprecation upon himself, if he do not.

15. But shall the Daughter that hath thus grieved the spirit of her Father, thus escape unpunished, and be in as good a condition as if she had never offended? And will not others be incouraged by her impunity, to despise their Parents after her example? There is much reason in this objection; and therefore what I have hitherto written, ought not to be understood, as if thereby were intended such a plenary indulgence for the daughter as should restore her

her *in integrum*, but only that ſhe ſhould be made capable of received ſuch relief from her Father, from time to time, as in relation to her neceſſities, and after-carriage, from time to time ſhould ſeem reaſonable; and that his Vow ought not to hinder him from affording her ſuch relief. But by what degrees, and in what proportion, the Father ſhould thus receive his Daughter into his Fatherly affection, and relieve her, muſt be left to diſcretion, and the exigence of circumſtances. Only I ſhould adviſe (in order to the objection, *viz.* for examples ſake, and that the Daughter might be made, even to her dying day, and kept, ſenſible of her great and ſinful diſobedience to her Father) that the Father ſhould cut off from his Daughter, and her Poſterity, ſome meet portion of his Eſtate, (as perhaps a fifth part at the leaſt; or if a fourth, or a whole third part, I ſhould like it the better;) and by a ſolemn deliberate vow, dedicate the ſame to be yearly imployed in ſome pious and charitable uſes. Theſe times will afford him choice of objects, if God ſhall move his heart ſo to do; and by ſo doing, he may, *Firſt.* in ſome ſort redeem, and make a kind of

satisfaction for his former *Rashness*, (not *Popishly* understood, and in regard of the *Justice of God*, but) in a *moral* sense, and in regard of the *World*, and his own *Conscience*. *Secondly*, it may be a good means to keep the Daughter in a continual fresh remembrance of her fault, that she may not, after a short and slight repentance (as in such cases too often it happeneth) forget the same; whereof she ought to have some remorse all the days of her life. *Thirdly*, he shall thereby after a sort, perform his first Vow; I mean acrording to the general intention thereof, and the rational part, (which was to make his Daughter repent her folly, and to smart for it:) the over-plus more than this, being but the fruit of rancor and perturbation. *Lastly*, he shall in so doing, doubly, imitate God our heavenly Father. *First*, when a rash or sinful act is made an occasion of a pious or charitable work, it beareth some resemblance of, or rather is indeed it self a gracious effect of that goodness and wisdom in God, whereby he bringeth light out of darkness, and good out of evil. *Secondly*, God Himself when he graciously pardoneth an high presumptuous sin, as he did

did *Davids* great ſin, in the matter of *Uriah*, commonly layeth ſome laſting affliction upon the offender, as he did upon *David*, who after the ſealing his pardon for that ſin by *Nathan*, ſcarce ever had a quiet day all his life long. The reaſon whereof ſeemeth to be double, partly for admonition to others, that none preſume to provoke God in like manner, leſt they ſmart for it alſo in like manner; and partly for the good of the offender, that he may by the ſmart be brought to the deeper ſenſe of his error, and be eſt-ſoons reminded of it, leſt he ſhould too ſoon forget it.

Thus have I with very much ado, (in that weak condition I have been in, ever ſince the queſtion came to my hands and wherein I yet continue) declared my opinion fully concerning the whole buſineſs as far as I underſtand it. More largely I confeſs than I intended, or perhaps was needful; and with greater ſeverity than (it may be) the parties will well like of. But truly I deſired to do the part of a faithful Confeſſor, and the ſores on both parts ſeemed to be ſuch as were not to be touched with too gentle a hand: In the Daughter an act of high diſobedience, tranſported by the paſſion of inordinate love; and

in the Father an act of great Rashness, transported by the passion of inordinate anger: both beyond the bounds of right Reason, and Religion; and both to be deeply repented of. However, I cannot be suspected to have writen any thing, either out of favour for, or prejudice against either party; not having the least conjecture who the persons are that are concerned in the business; nor so much as in what part of the Nation they live. I shall pray that God would direct them both, to do that which may best serve to his glory, and bring the soundest comfort to their own souls. Amen.

THE

The Caſe of the Sabbath.

To my very Loving Friend Mr. Tho. Sa. *at* S. B, *Nottingh.* March 28. 1634.

SIR,

WHen by your former Letter, you deſired my preſent Reſolution in two Queſtions therein propoſed concerning the Sabbath, although I might not then ſatisfie your whole deſire (being loth to give in my opinion before I had well weighed it) yet that I might not ſeem altogether to decline the task impoſed on me by you, I engaged my ſelf by promiſe, within ſhort time, to ſend you what upon further conſideration, I ſhould conceive thereof. Which promiſe, ſo far as my many diſtractions and occaſions would permit, I endeavoured to perform by peruſing the Books you ſent me, (in the one whereof, I found written on the ſpare Paper with your hand, a Note moving a third Queſtion, about, the Name of the Sabbath alſo;) and by looking up and reviewing ſuch ſcattered Notes

Notes as I had touching that Subject. But then I met with difficulties so many and great (whereof the more I considered, the mor still I found them to increase) that I saw it would be a long work, and take up far more time than I could spare, to digest and enlarge what seemed needful to be said in the three Questions in such sort as was requisite, to give any tolerable satisfaction either to my self or others. Wherefore I was eft-soons minded to have excused my self by Letter to you, and farther medling with these Questions, and to have remitted you over for better satisfaction to those men, that have both better leisure to go about such a business, and better abilities to go through with it than I have; for to questions of importance, better nothing be said, than not enough: And the rather was I minded so to do, when I perceived there were rumors spread in these parts, (occasioned, as I verily suppose, by some speeches of your good friend Mr. *Tho. A.*) as if I were writing a Treatise of the morality of the Sabbath. Which besides that, it might raise an expectation of some great matters which I could in no wise answer; it might also expose that little I should have

have done to the mis-censures of men wedded to their own opinions, if after I had laid mine open, it should have happened in any thing (as in some things like enough it would) to have disagreed from theirs. Yet because by your late kind Letters, (wherein, whilst I was slack in making it, you have prevented mine excuse,) I perceive the continuance of your former desire; I have therefore since resolved to do somewhat, though not so much as I first intended, hoping that you will in friendly manner interpret my purpose therein. I have therefore now sent you but a naked summary of my thoughts concerning the three Questions, abstracted from all those Explanations, Reasons, Testimonies of Authors, removals of objections, and other such Enlargements as have might have given further both lustre and strength thereunto.

Howsoever, by what I presently send, you may sufficiently see what my opinion is; which I shall be ready to clear, so far as my understanding will serve, in any particular wherein you shall remain doubtful; and as ready to alter when any man shall instruct me better, if he bring good evidence either

either of Reason or of Scripture-Text for what he affirmeth: The Questions are,

1. Which is the fittest Name whereby to call the day of our Christian weekly-rest? whether the Sabbath, the Lord's-day, or Sunday?

2. What is the meaning of that Prayer appointed to be used in our Church; [*Lord have Mercy upon us, and incline*, &c.] as it is repeated after, and applied to the words of the fourth Commandment?

3. Whether it be lawful to use any bodily recreation upon the Lord's-day? and if so, then what kind of Recreations may be used?

I. Concerning the Name *Sabbatum*, or Sabbath, I thus conceive;

1. That in Scripture, Antiquity, and all Ecclesiastical Writers, it is constantly appropriated to the day of the Jews Sabbath, or Saturday; and not at all (till of late years) used to signifie our Lord's-day, or Sunday.

2. That to call Sunday, by the name of the Sabbath-day, (*rebus sic stantibus*) may for sundry respects be allowed in the Christian

ſtian Church without any great inconvenience: and that therefore men (otherwiſe ſober and moderate) ought not to be cenſured with too much ſeverity, neither charged with Judaiſm, if ſometimes they ſo ſpeak.

3. That yet for ſundry other reſpects it were perhaps much more expedient, if the word Sabbath (in that motion) were either not at all, or elſe more ſparingly uſed.

II. Concerning the name *Dominica*, or the Lord's-day:

1. That it was taken up in memory of our Lord Chriſt's Reſurrection, and the great work of our Redemption accompliſhed therein.

2. That it hath warrant from the Scripture, (*Apoc.* 1. 10.) and hath been of long continued uſe in the Chriſtian Church, to ſignifie the firſt day of the week, or Sunday.

III. Concerning the name *Dies Solis*, or Sunday.

1. That it is taken from the courſes of the Planets, as the names of the other days are: the reaſon whereof is to be learned from Aſtronomers.

2. That

2. That it hath been used generally, and of long time, in most parts of the World.

3. That it is not justly chargeable with Heathenism; and that it proceedeth from much weakness at the least, if not rather superstition) that some men condemn the use of it, as prophane, heathenish or unlawful.

IV. Of the fitness of the aforesaid three names compared one with another.

1. That according to the several matter or occasions of speech, each of the three may be fitter in some respect, and more proper to be used then either of the other two; As, *viz.*

1. The Name *Sabbath*: when we speak of a time of rest *indeterminate*, and in general, without reference to any particular day: and the other two, when we speak determinately of that day which is observed in the Christian Church. Of which two again.

2. That of the *Lord's-day* is fitter, in the Theological and Ecclesiastical; and,

3. That of *Sunday*, in the civil, popular, and common use.

2. Yet

2. Yet so as that none of the three be condemned as utterly unlawful, whatsoever the matter or occasion be, but that every man be left to his Christian liberty herein, so long as superior Authority doth not restrain it. Provided ever, that what he doth herein, he do it without vanity or affectation in himself, or without uncharitable judging or despising his Brother that doth otherwise than himself doth.

To the Second Question.

V. The words of that Prayer, [*Lord have mercy, &c.*] repeated after the fourth Commandment, do evidently import, as they do in each of the other ten.

1. An acknowledgment of three things, *viz.*

1. That the words of that particular Commandment contain in them a Law, whereunto we are subject.

2. That it is our bounden duty to endeavour with our utmost power to keep the said Law.

3. That our naughty hearts have (of themselves) no inclination to keep it, until

until God, by the work of his Grace, shall incline them thereunto.

2. A double supplication, *viz.*

1. For Mercy, in respect of the time past, because we have failed of our bounden duty heretofore.

2. For Grace, in respect of the time to come, that we may perform our duties better hereafter.

VI. But how far forth the words of the fourth Commandment are to be taken as a Law binding Christians, and by what authority they have that binding power, is the main difficulty.

For the resolution where of, it may suffice every sober-minded Christian, to understand the Prayer appointed by the Church, in that meaning which the words do immediately import; and without over-curious inquiry into those things that are more disputable, to believe these few points following, which ought to be taken as certain and granted amongst Christians; *viz.*

1. That no part of the Law delivered by *Moses* to the Jews, doth bind Christians under the Gospel, as by virtue of that delivery; no, not the ten Commandments

mandments themselves, but least of all the fourth, which all confess to be (at least) in some part Ceremonial.

2. That the particular determination of the time to the seventh day of the week, was Ceremonial: And so the obligation of the fourth Commandment in that respect, (although it were *Juris divini positivi* to the Jew, yet) is ceased together with other legal Ceremonies since the publishing of the Gospel, and bindeth not Christian Consciences.

3. That the substance of the fourth Commandment in the general, (*viz.* that some certain time should be set apart from secular imployments, and to be sanctified to an holy rest, for the better attending upon God's publick and solemn worship) is moral and perpetual, and of Divine right, as a branch of the Law of Nature, whereunto Christians under the Gospel are still bound.

4. That *de facto*, the Lord's-day, or Sunday, is the time appointed to us for that purpose by such sufficient Authority, as we stand bound in Conscience

to obey: *absq; hoc*, whether that Authority be immediately Divine, or but mediately through the power of the Church.

This is sufficient to regulate the Judgment and Conscience of every ordinary Christian; yet is it not unlawful for Scholars (soberly and fairly) to argue and debate a little farther matters which are questionable, for the better finding out of the Truth.

And the points in this Argument that are most in controversie, are these two, *viz.*

1. Concerning the observation of a weekly Sabbath; whether it be of necessity to keep one day of every seven? And by what right we are tied so to do?

2. Concerning the change of the Jewish Sabbath into the Lord's-day; and by what Authority it was done.

VII. As touching the observation of a weekly Sabbath, there are these three different opinions, *viz.*

1. That it is *de jure naturali*, as a branch properly of the Law of Nature.

2. That it is properly and directly *de jure divino*

divino positivo, established by God's express positive Ordinance in his Word.

3. That it is merely *de jure humano & Ecclesiastico*; introduced by Authority, and established by the custom and consent of the Catholick Church.

Touching which three opinions, I leave it to the judicious to consider.

1. Whether the last of them might not hap to be of evil consequence, by leaving it in the power of the Church, at her pleasure to change the old proportion of one in seven, (which hath continued ever since the days of *Moses*) into any other greater or lesser proportion of time?

2. Whether the two former opinions (though they do indeed avoid that inconvenience) do not yet stand upon such weak grounds, otherwise that they are by many degrees more improbable than the third.

3. Whether a fourth opinion going in a middle way, might not be proposed with greater probability, and entertained with better safety than any of the former three? *viz.* That the keeping holy of one day in seven, is of Divine positive right, taking *jus divinum* in a large signification: not for

that only which is primarily, properly, and directly such, according to the tenor of the second opinion; but including withal that which is Secondarily, Consequently, and Analogically such.

VIII. For the better understanding whereof, we are to consider;

1. That those things are *de jure divino* in the first and strict sense: which either,

1. Are enjoyned by the expres Ordinance and Commandment of God in his holy Word; or else,

2. May be deduced there-from by necessary, evident, and demonstrative illation.

In which sense, there are not many things *de jure divino* under the New Testament.

2. That for a thing to be *de jure divino* in the latter and larger sense, it sufficeth that it may be by humane Discourse upon reasons of Congruity probably deduced from the Word of God, as a thing most convenient to be observed by all such as desire unfeignedly to order their ways according to God's holy Will.

3. That this kind of *Jus divinum* may be reason-

reaſonably diſcerned by the concurrence of all, or the chiefeſt of theſe four things following, *viz.*

1. A foundation of Equity for the thing in general, either in the Law of Nature, or by vertue of Divine Inſtitution.

2. An Analogie held for the particular determination, with ſuch Laws and directions as were given to the Jewiſh people in the Old Teſtament, ſo far as the reaſon of Equity holdeth alike.

3. Some probable inſinuations thereof in the Scriptures of the New Teſtament.

4. The continued practice of the Chriſtian Church, ſo far as the condition of the times in the ſeveral Ages thereof would permit. For, *Lex currit cum praxi.*

4. That all theſe do in ſome meaſure concur for the obſervation of a weekly Sabbath; as upon the examination of the ſeveral particulars will eaſily appear.

IX. This diſtinction of *Jus divinum* is to be obſerved the rather, becauſe it may be of very good uſe, (if rightly underſtood and applied.)

1. For cutting off the moſt material in-

ſtances, which are uſually brought by the Romiſh Party for the maintenance of their unwritten Traditions.

2. For the clearing of ſome, and the ſilencing of other ſome Controverſies in the Church, which are diſputed *pro* and *con* with much heat; as, *viz.* concerning,

1 The Government of the Church by Biſhops.

2. The Diſtinction of Biſhops, Prieſts and Deacons.

3. The Exerciſe of Eccleſiaſtical Cenſures, as Suſpenſion, Excommunication, *&c.*

4. The Building and Conſecrating of Churches for the ſervice of God.

5. The aſſembling of Synods upon needful occaſion, for the maintenance of the Truth, and for the ſettling of Church Affairs.

6. The forbidding of Marriages to be made within certain degrees of Conſanguinity and Affinity.

7. The Baptizing of Infants born of Chriſtian Parents.

8. The maintenance of the Clergy by the Tithes of the People, and ſundry other things: none of all which (to my under-

understanding) seem to be *de jure divino* in that first and proper sense; but yet all (or most) of them to be *de jure divino* in this latter and larger signification.

3. For the right bounding of the Churches power, that she be neither denied her lawful liberty in some things, nor yet assume to her self a greater power than of right belongeth unto her in other some. For,

1. In things that are meerly *de jure humano*; every particular Church hath power in herself from time to time, to order, and alter them at her pleasure, and may exercise that power when she thinketh fit.

2. Things that are *de jure divino* in that first sense, the Universal Church may not (and much less then may any particular) at all take upon her to alter, but must observe them inviolably, whatsoever necessities or distresses she be put unto.

3. Things that are *de jure divino* in this latter sense; every particular Church (but much more the Universal) hath a power to alter in a case of necessity; But the exercise of that power is so admitted to extraordinary cases, that it may

not be safe for her at all to exercise it; unless it be for the avoiding of mighty inconveniences, not otherwise to be avoided.

X. As for the other controversed Point, touching the change of the day, from the last day of the week, or Saturday, (which was the Jews Sabbath) to the first day of the week, or Sunday, which is our Lord's-day: My opinion is, that the observation of the Lord's-day among Christians instead of the Jewish Sabbath,

1. Is not grounded upon any commandment given by Christ to his Apostles.

2. Nor yet upon any Apostolical Constitution given by the Apostles unto the Churches in that behalf. But

3. That it was taken up by the succeeding Church; partly in imitation of some of the Apostles, who used (especially in the Churches of the Gentiles; for in the Churches of *Judea* the old Sabbath was still observed) to Celebrate their Holy Assemblies upon the first day of the week, in the honour of Christ and his Resurrection; and partly for the avoiding of Judaism, wherewith falser Teachers in those first times were ever and anon

non attempting to enthral the Christian Church.

4. That the observation of the Lord's-day, having been confirmed by so many Constitutions both Ecclesiastical and Imperial, and having withal continued with such uniform consent throughout the Christian World, for so many Ages ever since the Apostles time; the Church (not to dispute what she may or may not do *in plenitudine potestatis*, yet) ought not to attempt the altering of it to any other day of the week.

To the third Question.

XI. In this matter touching Recreations to be used on the Lord's-day, much need not be said, there being little difficulty in it, and his Majesties last Declaration in that behalf having put it past Disputation. I say then,

1. *For the Thing.* That no man can reasonably condemn the moderate use of lawful Recreations upon the Lord's-day, as simply, and *de toto genere* unlawful.

2. *For the Kind.* Albeit there can be no certain rules given herein, (as in most indifferent

different things it cometh to pass) by reason of the infinite variety of circumstances, to fit with all particular cases, but that still much must be left to private discretion: yet for some directions in this matter, respect would be had in the choice of our Recreations,

1. To the Publick Laws of the State. Such games or sports as are by Law prohibited, (though in themselves otherwise lawful) being unlawful to them that are under the obedience of the Law.

2. To the condition of the Person. Walking and discoursing with men of liberal Education, is a pleasant recreation; it is no way delightsom to the ruder sort of People, who scarce account any thing a sport which is not loud and boysterous.

3. To the effects of the Recreations themselves. Those being the meetest to be used, which give the best refreshing to the body, and leave the least impression in the mind. In which respect, Shooting, Leaping, Pitching the Bar, Stool-ball, *&c.* are rather to be chosen than Dicing, Carding, *&c.*

3 For *the Use.* That men would be exhorted

horted to uſe their Recreation, and Paſtimes upon the Lord's-day in Godly and commendable ſort. For which purpoſe, amongſt others theſe cautions following would be remembred.

1. That they be uſed with great moderation (as at all other times, ſo eſpecially, and much more) upon the Lord's-day.

2. That they be uſed at ſeaſonable times, not in time of Divine Service, nor at ſuch hours as are appointed by the Maſter of the Houſe whereunto they belong, for Private Devotions within his own Houſe. His Majeſties Declaration limiteth mens liberty this way, till after Even-ſong be ended.

3. That they be ſo uſed, as that they may rather make men the fitter for God's Service the reſt of the day, and for the works of their Vocations the reſt of the week, than any way hinder or diſable them thereunto, by over-wearying the body, or immoderately affecting the mind.

4. That they uſe them not doubtingly, for whatſoever is not of Faith, is ſin. He therefore that is not ſatisfied in his

his own judgment, that he may lawfully, and without sin, use bodily recreations on the Lord's-day, ought by all means to forbear the use thereof, lest he should sin against his own Conscience.

5. That they be severer towards themselves than towards other men in the use of their Christian liberty herein, not making their own opinion or practice a rule to their brethren. In this, as in all indifferent things, a wise and charitable man will in godly wisdom deny himself many times the use of that liberty, which in a godly charity he dare not deny to his Brother.

THE

The CASE of the *Use of the* LITURGY, *stated in the late times.*

SIR,

WHereas you are desirous to know what my Judgment and Practice is concerning the using or forbearing of the established Liturgy, (either in whole or in part) in the publick Service of God, and Offices of the Church, if that may be any satisfaction to your self or Friend: I shall fully acquaint you what my practice is, (whereunto if my Judgment be not conform'd I am without all escape mine own Condemner) and upon what consideration, I have according to the variation of times, varied my self therein.

So long as my Congregation continued unmixt with Souldiers, (as well after as before the promulgation of the Ordinance of the two Houses, for the abolishing of Common Prayer) I continued the use of it, as I had ever formerly done in the most peaceable and orderly times, not omitting those very Prayers,

Prayers, the silencing whereof I could not but know to have been chiefly aimed in the Ordinance, *viz.* Those for the King, the Queen, and the Bishops. And so I did also, though some Soldiers were casually present, till such time as a Troop coming to quarter in the Town (who on purpose to continue a kind of Garrison among us or Head quarter) were so enraged at my reading of it the first Sunday after they came, that immediately after Morning Service, they seized on the Book and tore it all to pieces.

Thenceforward, during their continuance here for full six Months and upwards, (*viz.* from the beginning of *November*, till they were calleda way to *Naseby* fight in *May* following,) besides that for want of a Book, of necessity I must; I saw it also behoved me, for the preventing farther outrage, to wave the use of the Book for the time, at least in the ordinary Service; only I read the Confession, the Lords Prayer, with the Versicles and the Psalms for the day; then after the first Lesson in the Forenoon, *Benedictus* or *Jubilate*, and in the Afternoon *Cantate*. After the second Lesson also in the Forenoon, sometimes the Creed, and sometimes the ten Command-

ments,

ments, and ſometimes neither, but only ſang a Pſalm, and ſo to Sermon: But all that while in the Adminiſtration of the Sacraments, the Solemnization of Matrimony, Burial of the Dead, and Churching of Women, I conſtantly uſed the ancient forms and rites to every of them reſpectively belonging, according to the appointment in the Book. Only I was careful in all the reſt to make choice of ſuch times and opportunities, as I might do them with moſt ſecreſie and without diſturbance of the Soldiers; But at the celebration of the Euchariſt I was the more ſecure to do it publickly, becauſe I was aſſured none of the Soldiers would be preſent.

After their departure I took the liberty to uſe the whole Liturgy, or but ſome part of it, omitting ſometimes more, ſometimes leſs upon occaſion, as I judged it muſt expedient, in reference to the Auditory, eſpecially if any Soldiers or other unknown perſons happened to be preſent. But all the while the ſubſtance of what I omitted I contrived into my Prayer before Sermon, the phraſe and order only varied; which, yet I endeavoured to temper in ſuch ſort, as that any perſon of ordinary capacity

capacity might easily perceive what my meaning was, and yet the words left as little liable to exception or cavil as might be.

About nigh two years ago, I was advertised (but in a very friendly manner) by a Parliament-man of note in these parts, that at a publick meeting in *Grantham*, great complaint was made by some Ministers (of the *Presbyterian*-gang, as I afterwards found) of my refractorines to obey the Parliaments Order in that behalf: The Gentleman told me withal, that although they knew long before what my judgment and practice was, yet they were not forward to take notice of it before complaint made, which being now done in so publick manner, if they should not take knowledge of it, the blame would lie upon them; he also advised me to consider well what I had to do; for I must resolve either to adventure the loss of my living, or to lay aside Common-Prayer, which if I should continue, (after complaint and admonition) it would not be in his power, nor in the power of any friend I had to preserve me. The effect of my then answer was, that if the case was so, the deliberation was not hard:

hard: I having long ago considered the Case, and resolved what I might with a good conscience do, and what were firtest for me in prudence to do, if I should ever be put to it, *viz.* to forbear the use of the Common-Prayer-Book, so far as might satisfie the Letter of the Ordinance rather than forsake my station.

My next business then was, to bethink my self of such a course to be thenceforward held in the publick worship in my own Parish, as might be likeliest neither to bring danger to my self by the use, nor to bring scandal to my Brethren by the disuse of the established Liturgy. And the course was this, to which I have held me ever since.

I begin the Service with a Preface of Scripture, and an exhortation inferred thence to make Confession of sins; which Exhortation I have framed out of the Exhortation, and Absolution in the Book contracted and put together, and expressed for the most part in the very same words and phrases, but purposely here and there transplaced, that it might appear not to be, and yet be the same.

Then followeth the Confession it self in the same Order it was inlarged, only with

the addition of some words, whereby it is rather explained than altered; the whole Form whereof both for your fuller satisfaction in that particular, and that you may partly conjecture what manner of addition or change I have made proportionably hereunto, (yet none so large) in other parts of the holy Office, I have here underwritten.

O Almighty God and merciful Father, We thy unworthy servants do with shame and sorrow confess, that we have all our life long gone astray out of thy ways like lost Sheep, and that by following too much the devices and desires of our own hearts. We have grievously offended against thy holy Laws, both in thought, word, and deed. We have many times left undone those good things which we might and ought to have done; and we have many times done those evils when we might have avoided them, which we ought not to have done: We confess, O Lord, that there is no health at all in us, nor help in any Creature to relieve us; But all our hope is in thy mercy, whose justice we have by our sins so far provoked. Have mercy upon us therefore, O Lord, have mercy upon us miserable offenders: Spare us good Lord, which confess our faults that we perish not: But according to thy gracious promises declared unto

unto mankind in Chriſt Jeſus our Lord; Reſtore us, upon our true Repentance, to thy grace and favour. And grant, O moſt merciful Father for his ſake, that we may henceforth ſtudy to ſerve and pleaſe thee, by leading a godly, righteous, and ſober life, to the glory of thy holy Name and the eternal comfort of our own ſouls, through Jeſus Chriſt our Lord, Amen.

After this Confeſſion, the Lord's Prayer, with the Verſicles, and *Gloria Patri*, and then the Pſalms for the day and the firſt Leſſon; after which in the Afternoon ſometimes *Te Deum* (but then only when I think the Auditory will bear it) and ſometimes an Hymn of my own compoſing, gathered out of the Pſalms and the Church Collects, as a general Form of thanks-giving (which I did the rather, becauſe ſome have noted the want of ſuch a Form as the only thing wherein our Liturgy ſeemed to be defective) and in the Afternoon, after the firſt Leſſon, the 98 or the 67 *Pſalm*; Then the ſecond Leſſon with *Benedictus* or *Jubilate*, after it in the Forenoon, and in the Afternoon a ſinging Pſalm; then followeth the Creed with *Dominus Vobiſcum*, and ſometimes the Verſicles in the end of the Litany, (*From*

our Enemies defend us, &c.) If I like my Auditory, otherwise I omit these Versicles.

After the Creed, *&c.* instead of the Letany and the other Prayers appointed in the Book, I have taken the substance of the Prayer I was wont to use before Sermon, and disposed it into several Collects or Prayers, some longer, and some shorter, but new modelled into the Language of the Common-Prayer-Book, much more than it was before: And in the Pulpit before Sermon, I use only a short Prayer in reference to the hearing of the Word and no more, so that upon the matter in these Prayers, I do but the same thing I did before, save that what before I spake without Book, and in a continued Form and in the Pulpit, I now Read out of a written Book broken into parcels, and in the Reading Desk or Pew.

Between which Prayers and the singing Psalm before the Sermon, I do also daily use one other Collect, of which sort I have for the purpose composed sundry made up as the former for the most part out of the Church Collects, with some little inlargement or variation, as namely Collects, Adventual, Quadragesimal, Paschal, and Pente-

Pentecostal for their proper seasons, and at other times Collects of a more general nature, as for Pardon, Repentance, Grace, *&c.* And after one or more of them in the Forenoon I usually repeat the ten Commandments with a short Collect after for Grace to enable us to keep them.

This hath been my practice, and is like still to be, unless some happy change of affairs restore us the liberty of using the old way again; or it be made appear to my understanding by some able charitable Friend, that I have therein done otherwise than I ought to have done; for I may say truly, I have not yet met with any thing in discourse either with my own reason or with others of sufficient strength to convince me, that I have herein done any thing but what may stand with the Principles as well of Christian Simplicity as Prudence.

There are but three things that I know off, that are of consideration opposed, *viz.*

1. *The Obligation of the Laws.*
2. *The Scandal of the Example.*
3. *An unseemly symbolizing (at least) with Schismaticks, if not partaking with them in the Schism.*

1. Law. Object. I.

The first and strongest Objection, which I shall therefore propose to the most advantage of the Objector, is, that which is grounded upon the Laws and the obligation; for it may be objected,

That every humane Law rightly established, so long as it continueth a Law, obligeth the Subject, (and that for Conscience sake) to the observation thereof, in such manner and form as in the said Law is prescribed, and according to the true intention and meaning of the Law-giver therein.

That a Law is then understood to be rightly established, when it containeth nothing but what is honest, and lawful, and is enacted by such person or persons as have full and sufficient authority to make Laws.

That a Law so established continueth a Law and is in force, till it be either repealed by as good and full authority as that by which it was made, or else antiquated, by a long continued (uninforced) disuse, with the tacite or presumed consent of the Law-giver.

That the act printed before the Common Prayer-Book and entituled, *An Act for the Uniformity*, *&c.* was such a Law, being it was established in a full and free Parlai-

Parliament, and in peaceable times, and ratified by the Royal Assent.

That it still continueth in force, being not yet repealed, but by such persons as (at least in the Opinion of those who maintain the Dispute) for want of the Royal Assent have not a sufficient right or authority to do such an Act; nor disused but of late times, and that by inforcement, and (as is presumed) much against the mind and will of the Law-giver.

That therefore it still retaineth the power of obliging in point of Conscience; that power being so essential and intrinsecal to every Law, *quatenus* a Law, that it can in no wise be severed from it.

And that no Minister publickly officiating in the Church can with a good Conscience either omit any part of that which is commanded by the aforesaid Law, or use any other From than what is contained in the aforesaid Book; but must either use the Form prescribed in the Book, or else to forbear to officiate.

The Answer to this Objection, (granting all the premises besides) dependeth upon the right understanding of that which is affirmed concerning the obligation of Laws,

according to the intention of the Law-giver; which, if it should be understood precisely of that particular, actual, and immediate intention of the Law-giver had in the making of any particular Law; and it is sufficiently declared by the words of the Law (in which sense only the Objection proceedeth) will not hold true in all Cases. But there is supposed besides that in the Law-giver a more general, habituate, and ultimate intention, of a more excellent and transcendent nature than the former, which is to have an influence into and an over-ruling power over all Laws, *viz.* an intention by the Laws to procure and promote the publick good: The former intention bindeth where it is subservient to the latter, or consistent with it, and consequently bindeth in ordinary cases and in orderly times, or else the Law is not an wholsom Law. But where the observation of the Law, by reason of the Conjuncture of circumstances or the iniquity of the times (contingencies which no Law-giver could either certainly foresee, or if foreseen could sufficiently provide against) would rather be prejudicial than advantageous to the publick, or is manifestly attended with more in-

con-

conveniences, and ſad conſequents to the obſervers, as all the imaginable good that can redouud to the publick thereby cannot ſin any reaſonable meaſure countervail. In ſuch caſe the Law obligeth not, but according to the latter and more general intention only. Even as in the Operations of nature, particular Agents do move ordinarily according to the proper and particular inclinations, yet upon ſome occaſions, and to ſerve the ends and intentions of univerſal Nature (for the avoiding of ſome thing which nature abhorreth) they are ſometimes carried with motions quite contrary to their particular natures, as the Air to deſcend, and the Water to aſcend, for the avoiding of Vacuity, *&c.* The Common received Maxim, which hath been ſufficiently miſapplied and that ſometimes to very evil purpoſes (ſince the beginning of theſe unhappy Diviſions) in the true meaning of it looketh this way, *Salus populi ſuprema lex*; the equity of which Maxim, as it leaveth in the Law-giver a power of diſpenſing the Law (which is a ſuſpending of the obligation thereof for a time, in reſpect of the proper and particular intenti-

on)

tion) as he shall see it expedient in order to the publick good, so it leaveth in the Subject a liberty upon just occasions, as in Cases of great Exigencies, and for the preventing of such hazards and inconveniencies as might prove of noisom consequence to the publick, to do otherwise than the Law requireth: And neither is the exercise of that power in the Law-giver to be thought an unreasonable Prerogative; nor the use of this liberty in the Subject an unreasonable presumption, inasmuch as the power of dispensing with particular Laws is such a prerogative, as without which no Common-wealth can be well governed, but Justice would be turned into Gall and Wormwood: Nor can the Supreme Governor with forfeiture of that faithfulness, which he oweth to the publick Weal divest himself thereof; And he that presumeth of the Law-givers consent to dispence with him for the observing of the Law in such needful Cases, where he hath not the opportunity to consult his pleasure therein, presumeth no more than he hath reason to do; for it may well be presumed, that the Law-giver who is bound in all his Laws, to intend the safety of

of the publick, and of every member thereof in his due propotion, hath no intention by the obſervation of any particular Law to oblige any perſon, who is a member of the publick to his deſtruction or ruine, when the common good is not anſwerably promoted thereby; Upon which ground it is generally reſolved by Caſuiſts, that no conſultation (meerly humane) can lay ſuch Obligation upon the Conſcience of the Subject, but that he may, according to exigency of circumſtances, do otherwiſe than the conſtitution requireth: Provided it be done *Extra caſum ſcandali & contemptus*, that is to ſay, without either bewraying in himſelf any contempt of the authority of the Law-giver by his carriage, or giving any juſt occaſion of ſcandal to others by his example in ſo doing.

I have been ſomewhat the larger in explaining this point, not only for the better clearing of the ſaid doubt, but alſo in reſpect of the uſefulneſs of this conſideration, for the preventing and removing of many ſcruples that may happen to conſcientious men in ſuch times as theſe, wherein ſo many things are (and are like

to

to be) commanded and forbidden, contrary to the eſtabliſhed Laws, and thoſe (as they are perſuaded) yet ſtanding in force. The beſt rule that I know to guide men in their deliberations and actions in ſuch emergent Caſes, is advisedly and unpartially toweigh the benefits and inconveniencies, as well on the one ſide as the other, and then compare them one with the other, as they ſtand in relation to the publick good. And if after ſuch examination and compariſon made, it ſhall then evidently (or but in the judgment of probability) appear, that the obſervation of the Law, according to the proper intention of the Law-giver therein, though with hazard of Eſtate, Liberty, or even Life it ſelf with a great tendency to the publick good, and in the preſervation of Church or Common-wealth in ſafety, peace, and order, then the preventing of the aforeſaid hazards, or other evil conſequents, by doing otherwiſe than the Law requireth, can have, or (which cometh to one) if the violating of the Law ſhall then appear to be more prejudicial to the publick good than preſervation of the Subjects eſtates, liberty, or life, can be beneficial thereunto; in ſuch Caſe the

the Subject is bound to hazard all he hath, and to undergo whatſoever inconveniencies or calamities can enſue thereupon, rather than violate the Law with contempt of that authority, to which he oweth ſubjection. But if it ſhall after ſuch compariſon be made, evidently (or, but more probably than the contrary) appear, that the preſervation of ſuch a perſons life, liberty, or eſtate, would more benefit the Church or Common-wealth, than the punctual obſervation of the Law at that time, and with thoſe circumſtances, would do, it were an unreaſonable and pernicious ſcrupuloſity for ſuch a perſon to think himſelf in that Caſe obliged for the obſerving of the Law, perhaps but once or twice, with little or no benefit to the publick, to ruine himſelf, thereby to render himſelf unuſeful and unſervicable to the publick for ever after.

To bring this diſcourſe home, and to apply it to the buſineſs under diſpute, ſuppoſe, ten, twenty, or an hundred Godly Miniſters well affected to the eſtabliſhed Liturgy, and actually poſſeſſed of Benefices, with the charge of Souls thereto belonging, ſhould think themſelves in Conſcience obliged

liged to use the whole form of the Book, as it it by the Act appointed, without any addition, omission, or alteration whatsoever, (and should notwithstanding the present conjuncture of affairs) resolve to use the same accordingly. It would be well considered, what the effects and consequents thereof would be. Besides other evils, these three are visible, which must all unavoidably follow one another; if any body shall be found (as doubtless within short time there will be found one or other) to inform and prosecute against them: 1. The undoing of so many worthy persons fit to do God and the Church service, together with all the other persons that depend upon them for livelihood, by putting the fruits of their Benefices, wherewith they should buy themselves Bread, under Sequestration. 2. The depriving those persons of the opportunities of discharging the duties that belong unto them in their ministerial Calling, in not permitting them after Sequestration to teach or instruct the people belonging to their charge, or to exercise any thing of their function publickly in the Church. 3. The delivering over the Sheep of Christ, that lately

lately were under the hands of faithful Shepherds, into the cuſtody of ravening Wolves, when ſuch Guides ſhall be ſet over their ſeveral Congregations, as will be ſure to miſ-teach them one way or other, *viz.* either by inſtilling into them Puritanical and Superſtitious Principles, that they may the more ſecurely exerciſe their Presbyterian tyranny over their Judgments, Conſciences, Perſons and Eſtates; or elſe by ſetting up new Lights before them, to lead them into a maze of Anabaptiſtical confuſion and frenzy.

Theſe Conſequences are ſo heavy to the ſufferers, ſo certain to infue upon the uſe of Common Prayer, and ſo much without the Power of the Law-giver (in this ſtate of affairs) either to remedy or prevent, that it is beyond the wit of man to imagine, what benefit to the publick can accrue by the ſtrict obſervation of the Act, can in any proportion countervail theſe miſchiefs. In which caſe that man muſt needs ſuppoſe a ſtrange auſterity in the Law-giver, that dare not preſume of his conſent to diſoblige him for the time from obſerving the ſame.

It would be alſo well conſidered, whe-

the

ther he that by his over nice scrupulosity runs all these hazards be not in some measure guilty of his own undoing, of deserting his station and betraying his flock, and do not thereby lose much of his comfort which a Christian Confessor may take in his sufferings, when they are laid upon him by the hand of God, not pulled upon himself by his own hands. And more I shall not need to say as to the first Objection.

Scandal. Object. II.

The next thing objected is the danger of the Scandal, that others might be ready to take at the Example, who seeing the Law so little regarded by such men, (men that have care of Souls, and perhaps also of some eminency and esteem in the Church, and whose example will be much looked upon,) will be easily encouraged by their Example to set light by all authority, and to take liberty to obey and disobey the Laws of their Sovereign at their pleasure.

But this Objection after we are satisfied well concerning the former, need not much trouble us: For,

1. It seemeth a very reasonable thing in Cases of great exigency (such as we now suppose

ſuppoſe that the fear of ſcandalizing our weak Brethren (which is but *debitum Charitatis* only) would lay upon us a peremptory neceſſity of ſerving the Law punctually, whatſoever inconveniencies or miſchiefs may enſue thereupon; whereas the duty of obedience to our known Governors (which is *debitum juſtitiæ* alſo, and therefore more obligatory than the other) doth not impoſe upon us that neceſſity, as hath been already ſhewn.

2. Beſides Arguments drawn from Scandal in things neither unlawful, nor (ſetting the reaſon of Scandal aſide) inexpedient, as they are ſubject to ſundry frailties otherwiſe, ſo are they manifeſtly of no weight at all when they are counterpoiſed with the apparent danger of evil Conſequents on the other ſide: For in ſuch Caſes there is commonly equal danger (if not rather ſometimes more) of Scandal to be taken from the Example the quite contrary way. We may ſee it in the debating the point now in hand: It is alledged on the one ſide, that by laying aſide the uſe of Common Prayer, men, who are not over ſcrupulous will be incourag'd to take a greater liberty in diſpenſing with the Laws (to

the despising both of Laws and Governors) than they ought. And why may it not be by the same reason alledged on the other side, that by holding up a necessity of using Common Prayer, men, who have tender Consciences, may be induced to entertain scruples (to their own undoing and the destruction of their People) when they need not?

3. But then in the third place, which cometh up home to the business in hand, and taketh off the objection clearly, is this, that in judging Cases of Scandal we are not to look so much after the event, what it it, or may be, as at the cause whence it cometh; for sometimes there is given just cause of Scandal, and yet no Scandal followeth, because it is not taken; sometimes Scandal is taken, and yet no just cause given; and sometimes there is both cause of Scandal given, and Scandal thereat taken. But no man is concerned in any Scandal that happeneth to another by occasion of any thing done by him, neither is chargeable with it farther, than he is guilty of having given it. If then we give Scandal to others and they take it not, the whole guilt is ours, and they are faultless;

If

If we give it and they take it, we are to bear a share in the blame as well as they, and that a deeper share too (*Væ homini, Wo to the man by whom the offence cometh*, Matth. 18. 7.) But if they take offence, when we give none, it is a thing we cannot help, and therefore the whole blame must lie upon them. Wherefore if at any time the doubt shall arise in the Case of Scandal, how far forth the danger may, or may not oblige us to the doing or not doing of any thing proposed, the Resolution will come on much the easier, if we shall but rightly understand what it is to give Scandal, or how many ways a man may become guilty of Scandalizing another by his Example. The ways, as I conceive, are but these four.

1. The first is when a man doth something before another man, which is in it self evil, unlawful and sinful. In which Case neither the intention of him that doth it, nor the event as to him that seeth it done, is of any consideration, for it mattereth not, whether the doer hath an intention to draw the other sin thereby or not; neither doth it matter, whether the other were thereby induced to commit

sin or not: The very matter and substance of the Action, being evil and done before others is sufficient to render the doer guilty of having given Scandal, though neither he had any intention himself so to do, nor was any other person actually scandalized thereby: Because whatsoever is in it self and in its own nature evil, is also of it self and in its own nature scandalous, and of ill example. Thus did *Hophni* and *Phineas* the Sons of *Eli* give Scandal by their wicked prophaneſs, and greedineſs about the Sacrifices of the Lord, and their vile and shameleſs abuſing the Women, 1 *Sam.* 2. 17, 22. And so did *David* also give great Scandal in the matter of *Uriah*, 2 *Sam.* 12. 14. Here the rule is, Do nothing that is evil for fear of giving Scandal.

2. The second way is, when a man doth some thing before another with a direct intention and formal purpose of drawing him thereby to commit sin; in which Case neither the matter of the Action, nor the event is of any consideration; for it maketh no difference (as to the sin of giving Scandal) whether any man be effectually enticed thereby to commit sin or not; neither doth it make any difference whether the

the thing done were in it self unlawful or not, so as it had but an appearance af evil and from thence an aptitude to draw another to the doing of that (by imitation) which should be really and intrinsecally evil: The wicked intention alone, whatsoever the effect should be, or what means soever should be used to promote it, sufficeth to induce the guilt of giving Scandal upon the Doer; this was *Jeroboam's* sin in setting up the Calves with a formal purpose and intention thereby (for his own secular and ambitious ends) to corrupt the purity of Religion, and to draw the People to an Idolatrous worship; for which cause he is so often stigmatized with it as with a note of infamy, to stick by him whilst the world lasteth, being scarce ever mentioned in the Scripture, but with this addition, *Jeroboam* the Son of *Nebat*, which made *Israel* to sin. Here the rule is, Do nothing, good or evil, with an intention to give Scandal.

3. The third way is, when a man doth something before another, which in it self is not evil, but indifferent, and so according to the rule of Christian liberty lawful for him to do or not do, as he shall see cause (yea, and perhaps otherwise commo-

dious and convenient for him to do) yet whereat he probably foreseeth the other will take Scandal, and be occasioned thereby to do evil. In such Case if the thing to be done be not in some degree (prudentially) necessary for him to do ; but that he might without very great inconvenience or prejudice to himself, or any third person leave it undone, he is bound in Charity and Compassion to his Brother's Soul (for whom Christ died) and for the avoiding of Scandal to abridge himself in the Exercise of his Christian liberty for that time, so far, as rather to suffer some inconvenience himself by the not doing of it, than by the doing of it to cause his Brother to offend. The very Case which is so often, so largely, and so earnestly insisted upon by St. *Paul*, see *Rom.* 14. 13, 21. *Rom.* 15. 1. 3. 1 *Cor.* 8. 17. 13. 1 *Cor.* 9. 12, 15, 19, 22. 1 *Cor.* 10. 23, 33. Here the rule is, Do onthing that may easily be forborn, whereat Scandal will be taken.

4. The last way is, when a man doth something before another, which is not only lawful, but (according to the exigencies of present circumstances, *Pro hic & nunc*) very behoveful and even (prudentially) necessary

ceſſary for him to do; but foreſeeth, that the other will be very like to make ill uſe of it, and take incouragement thereby to commit ſin, if he be not withal exceeding careful, as much as poſſibly in him lieth, to prevent that Scandal that might be taken thereat. For *qui non prohibet peccare cum poteſt, jubet.* In ſuch caſe the bare neglect of his Brother, and not uſing his uttermoſt indeavour to prevent the evil that might enſue maketh him guilty. Upon which conſideration ſtandeth the equity of that Judicial Law given to the Jews, *Exod.* 21. 33, 34. which ordereth; That in caſe a man dig a Pit or Well for the uſe of his Family, and looking no further than his own conveniency, puts no cover upon it, but leaves it open, whereby it happeneth his neighbours Beaſt to fall thereinto and periſh, the Owner of the Pit is to make it good, inaſmuch as he was the Occaſioner of that loſs to his Neighbour, which he might and ought to have prevented. Here the rule is, Order the doing of that which may not well be left undone, in ſuch ſort, that no Scandal (ſo far as you can help it) may be taken thereat.

To apply this. The thing now under de-

bate (*viz.* the Action proposed to present enquiry) is the laying aside the Common-Prayer-Book enjoyned by Law, and using instead thereof some other form of Church-Service of our own devising; And the enquiry concerning it is, Whether it may be done with a good Conscience in regard of the Scandal, that was given, or(at least) may be taken thereat. Yea, or no? Now forasmuch as in this enquiry we take it for granted, that the thing to be done is not in its own nature and simply evil, but rather (in this state of affairs) prudentially necessary, and that they who make scruple at it upon the point of Scandal have not the least intention of drawing either the Laws into contempt, or the Brethren into sin by their example. It is manifest that three of the now mentioned Cases, with the several rules to each of them appending, are not pertinent to the present enquiry. But since the last of the four only proveth to be our Case, we have no more to do, for the setling our Judgments, the quieting our Consciences, and the regulating our Practice in this affair, than to consider well, what the rule in that Case given obligeth us unto: Which is, not to leave the Action undone

undone for the danger of Scandal, which, beſides the inconveniences formerly mentioned, would but ſtart new queſtions, and thoſe beget more to the multiplying of unneceſſary ſcruples *in infinitum:* But to order the doing of it ſo, that (if it were poſſible) no Scandal might at all enſue thereupon, or at leaſt not by our default, through our careleſs or indiſcreet managery thereof; Even as the Jew that ſtood in need to ſink a Pit for the ſervice of his Houſe or Grounds, was not (for fear his Neighbours Beaſt ſhould fall into it and be drowned) bound by the Law to forbear the making of it, but only to provide a ſufficient Cover for it when he had made it. The thing then in this Caſe is not to be left undone, when it ſo much behoveth us to do it, but the Action to be carried on (for the manner of doing, and in all reſpects and circumſtances thereunto belonging) with ſo much clearneſs, tenderneſs, moderation, and wiſdom (to our beſt underſtandings) that the neceſſity of ſo doing, with the true cauſe thereof, may appear to the World, to the ſatisfaction of thoſe who are willing to take notice of it, and that ſuch Perſon as would be willing to make uſe of our Example

ample to do the same thing, where there is not the like cause of necessity, may do it upon their own score, and not be able to vouch our Practice for their excuse: which how it may best be done for particular directions, every Charitable and Conscientious man must ask his own discretion; some general hints, tending thereunto, I shall lay down in answering the next Objection (where they will fall in again not improperly) and so stop two gaps with one Bush.

Schism. Object. III.

The last Objection is that of Schism. The Objectors hold all such Persons, as have opposed either against Liturgy or Church Government, as they were by Law established, within the Realm for no better than Schismaticks: and truely I shall not much gainsay it. But then they argue, that for them to do the same thing in the publick worship of God, that Schismaticks do, and for the doing whereof especially it is that they justly account them Schismaticks, would (as they conceive) involve them in the Schism also, as partakers thereof in some degree with the other: And their Consciences also would from *Rom.* 14. 22. Condemn them, either of Hypocrisie in allowing

allowing that in themſelves and in their own practice which they condemn in others, or of uncharitableneſs in judging others for Schiſmaticks, for doing but the ſame thing which they can allow themſelves to Practiſe; for all that ſuch Perſons, as they call Schiſmaticks, do in this matter of the Church Service, is but to leave out the Church Prayers, and to put in their own: Or, ſay this ſhould not make them really guilty of the Schiſm they deteſt, yet would ſuch their ſymbolizing with them ſeem (at leaſt) a kind of an unworthy compliance with them more than could well become the ſimplicity of a Chriſtian, much leſs of a Miniſter of the Goſpel, whoſe duty it is to ſhun even the leaſt appearance of evil, 1 *Theſ.* 5. Beſides, that by ſo doing they ſhould but confirm theſe men in their Schiſmatical principles and practice.

This Objection hath three Branches; To the firſt whereof I oppoſe the old ſaying, *Duo cùm faciunt idem non eſt idem*; which although ſpoken quite to another purpoſe, yet is capable of ſuch a ſenſe as will very well fit our preſent purpoſe alſo. I anſwer therefore in ſhort; That to do the ſame thing that Schiſmaticks do (eſpecially

ly in times of confusion, and until things can be reduced into better Order, and when we are necessitated thereunto to prevent greater mischiefs) doth not necessarily infer a partaking with them in Schism; no, nor so much as probably, unless it may appear upon probable presumptions otherwise, that it is done out of the same schismatical spirit, and upon such schismatical principles as theirs are.

The other two branches, *viz.* that of seeming compliance with Schismaticks, and that of the ill use they make of it to confirm them in their Schism, do upon the matter fall in upon the aforesaid point of Scandal, and are in effect but the same objection only put into a new dress, and so have received their answer already. And the only remedy against these fears (as well that of Scandal, as this of Schism) is the same which is there prescribed, even to give assurance to all men by our carriage and behaviour therein, that we do not lay aside Common-Prayer of our own accord, or out of any dislike thereof, neither in contempt of Lawful Governours, or of the Law, not out of any base compliance with the times, or other unworthy secular

self

ſelf ends, nor out of any ſchiſmatical principle, ſeditious deſign, or innovating humour; but meerly inforced thereunto, by ſuch neceſſity as we cannot otherwiſe avoid, in order to the glory of God and the publick good, for the preſervation of our Families, our Flocks, and our Functions, and that with the good leave and allowance (as we have great reaſon to believe) of ſuch as have power to diſpenſe with us and the Laws in that behalf. This if we ſhall do, *bona fide*, and with our utmoſt indeavours, in ſingleneſs of heart, and with Godly intention, perhaps it will not be enough to prevent either the cenſures of inconſiderate and inconſiderable Perſons, or the ill uſe may be made of our example through ignorance of ſome, *Scandalum puſillorum*; or through the perverſneſs and malice of other ſome, *Scandalum Phariſæorum*, as the Schools term them. But aſſuredly it will be ſufficient in the ſight of God, and in the witneſs of our own hearts, and to the Conſciences of conſidering and Charitable men, to acquit us clearly of all guilty, either of Scandal or Schiſm in the leaſt degree. Which we may probably do by obſerving theſe enſuing, and ſuch other like, general

general directions, (the liberty of using such meet accommodations, as the circumstances and in particular Cases shall require evermore allowed and reserved) *viz.*

1. If we shall decline the Company and society of known Schismaticks, not conversing frequently and familiarly with them, or more than the necessary Affairs of life, and the rules of Neighbourhood and common Civility will require; especially not to give countenance to the Church assemblies, by our presence among them, if we can avoid it.

2. If we shall retain as well in our common discourse, as in our Sermons, and the holy Offices of the Church, the old Theological and Ecclesiastical terms and forms of Speech, which have been generally received, and used in the Churches of Christ, which our People are well acquainted with, and are wholsom and significant: And not follow our new Masters in that uncouth affected garb of Speech or canting Language rather (if I may so call it) which they have of late time taken up, as the signal, distinctive, and characteristical note of that which in their own Language they call the Godly Party or Communion of Saints.

3. If

3. If in officiating we repeat not only the Lords Prayer, the Creed, the Ten Commandments; and ſuch other paſſages in the Common-Prayer-Book, as (being the very words of Scripture) no man can except againſt, but ſo much alſo of the old Liturgy beſides, in the very words and ſyllables in the Book, as we think, the Miniſters of State in thoſe parts where we live will ſuffer, and the Auditory before whom we officiate will bear; ſith the Officers in all parts of the Land are not alike ſtrict, nor the People in all Pariſhes not alike diſaffected in this reſpect.

4. If where we muſt of neceſſity vary from the words, we yet follow the Order of the Book in the main parts of the holy Offices, retaining the ſubſtance of the Prayers, and imbelliſhing thoſe of our own making, which we ſubſtitute into the place of thoſe we leave out, with Phraſes and Paſſages taken out of the Book in other places.

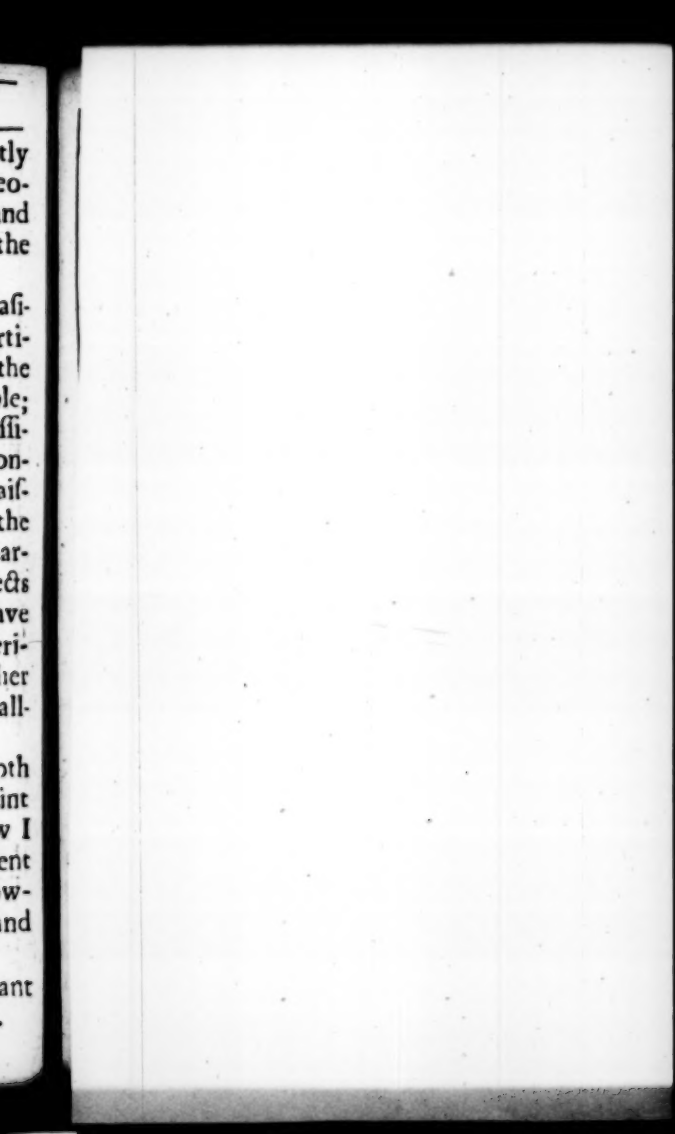
5. If where we cannot ſafely mention the particulars expreſſed in the Book, as namely, in Praying for the King, the Queen, the Royal Progeny, and the Biſhops, we ſhall yet uſe in our Prayers ſome ſuch general terms, and other intimations deviſed

devised for the purpose, as may sufficiently convey to the understandings of the People, what our intentions are therein, and yet not be sufficient to fetch us within the compass of the Ordinance.

6. If we shall in our Sermons take occasion now and then, where it may be pertinent, either to discover the weakness of the Puritan principles and tenents, to the People; or to shew out of some passages and expressions in the Common-Prayer-Book, the consonancy of those Observations we have raised from the Text, with the judgment of the Church of *England*, or to justifie such particular passages, in the Letany, Collects and other parts of our Liturgy, as have been unjustly quarrelled at, by Presbyterians, Independents, Anabaptists, or other (by what name or title soever they be called) Puritan Sectaries.

Thus have I freely accquainted you both with my practice and judgment in the point proposed in your Friends Letter; How I shall be able to satisfie his or your judgment in what I have written, I know not: However, I have satisfied both your desire and his in writing and shall rest,

Your Brother and Servant

Novemb. 2. 1652. in the Lord.

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